96-173

COAL SEVERANCE TAXES

HEARINGS
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS
SECOND SESSION
ON
H.R. 6625, H.R. 6654, and H.R. 7163
BILLS TO AMEND THE POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978 TO FURTHER THE OBJECTIVES OF NATIONAL ENERGY POLICY OF CONSERVING OIL AND NATURAL RESOURCES THROUGH REMOVING EXCESSIVE BURDENS ON PRODUCTION OF COAL

MARCH 21 AND JUNE 5, 1980

Serial No. 96–173

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Committee on Interstate and Foreign Commerce

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COAL SEVERANCE TAXES

FRIDAY, MARCH 21, 1980

House of Representatives,
Subcommittee on Energy and Power,
Committee on Interstate and Foreign Commerce,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2123, Rayburn House Office Building, Hon. Philip R. Sharp, presiding (Hon. John D. Dingell, chairman).

Mr. Sharp. The Subcommittee on Energy and Power will come to order.

This morning we are going to begin hearings on H.R. 6625 and H.R. 6654 regarding the coal severance taxes.

The United States has the world's richest deposit of an important energy resource—coal. Our national coal reserves are more abundant than oil reserves of the entire Middle East. As our domestic oil reserves are exhausted, coal must increasingly sustain our Nation's energy security and self-sufficiency. Conversion from oil to coal was a prime objective of the National Energy Act and I was a strong supporter of that objective.

But, despite our national goal of reducing oil imports by the increased use of coal, we find that the use coal reserves is being impeded. We are told one of the reasons is that State coal severance taxes are restricting the use of coal. Montana, which has perhaps one-fourth of the Nation's coal reserves, for example, has imposed a tax of 30 percent. Other States have imposed lesser—but still significant—taxes.

These taxes seem designed to prevent the increased use of coal—something the subcommittee will want to consider at this morning's hearing. They are costs added to the price of producing electricity and consumer goods and they show up in inflated consumer utility bills and industrial operating expenses.

If some limitation is not imposed now, it is unlikely other coal producing States will resist the temptation to exploit their coal in the same manner. These States already reap large benefits from coal production—coal producers pay the cost of reclaiming coal producing land and the Federal Government provides substantial input aid to cover State costs related to coal production from Federal lands within these States.

These taxes far exceed any needs that States may have for compensation for their costs related to coal extraction. The cost of these severance taxes is borne prinicipally by consumers in other states who have no voting voice in deciding the rates they must pay.

READEX
FICHE

My bill, H.R. 6625, and H.R. 6654, which the subcommittee is also considering, would not eliminate State severance taxes but would limit them instead to a reasonable basis. I believe the 12.5 percent ceiling in both bills is high enough to allow States to obtain compensation for costs of services they actually provide to support coal production and to add an additional increase to cover general welfare requirements.

[Testimony resumes on p. 12.]

[The texts of H.R. 6625, H.R. 6654, and H.R. 7163, subsequently introduced, follow:]

I

H.R. 6625, introduced by Mr. Sharp (for himself, Mr. Gramm, Mr. Blanchard, Mr. Breaux, Mr. Cavanaugh, Mr. Clay, Mr. Davis of Michigan, Mr. Ford of Michigan, Mr. Frenzel, Mr. Garcia, Mr. Hagedorn, Mr. Huckaby, Mr. Leach of Louisiana, Mr. Leland, Mr. Loeffler, Mr. Luken, Mr. Oberstar, Mr. Pickle, Mr. Smith of Iowa, and Mr. Vento) on February 26, 1980,
Cosponsored on March 17, 1980, by:
Mr. Annunzio, Mr. Baldus, Mr. Benjamin, Mr. Corcoran, Mr. Fithian, Mr. Hamilton, Mr. Hyde, Mr. Jacobs, Mr. Murphy of Illinois, Mr. Tauke, and Mr. Yates;
Cosponsored on April 17, 1980, by:
Mr. Brademas, Mr. Harkin, Mr. Bowen, Mr. Hance, Mr. Kastenmeier, and Mr. Gibbons;
Cosponsored on April 30, 1980, by:
Mr. Nedzi, Mr. Stenholm, and Mr. Carr,
is as follows:

A BILL

To amend the Powerplant and Industrial Fuel Use Act of 1978 to further the objectives of national energy policy of conserving oil and natural resources through removing excessive burdens on production of coal.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That the Congress finds that, in order to alleviate the national energy emergency, reduce national dependence on petroleum imports, encourage the highest and best use of domestic**

petroleum and natural gas, and enhance interstate commerce by promoting increased reliance on our national reserves of coal for the generation of electricity and power, it is necessary to remove excessive burdens on production of coal used in powerplants and major fuel-burning installations.

SEC. 2. (a) The Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.) is amended by adding immediately following section 807 the following new section:

"SEC. 808. COAL FOR POWERPLANT AND INDUSTRIAL CONVERSION.

"(a) LIMITATION.—Notwithstanding any other provision of State or Federal law, with respect to any coal which is destined for shipment in interstate commerce for use in any powerplant or major fuel-burning installation, the sum of all severance taxes or fees, in respect of any fiscal year, levied upon or collected from any taxpayer, by a State or any political subdivision thereof on such coal or on any improvements or other rights, property, or assets produced, owned, or utilized in connection with the production of such coal shall not exceed a total of 12½ percent of the value of such coal produced during such fiscal year at the time it has been extracted and prepared for transportation free on board the production site, exclusive of all State and local taxes and fees.

"(b) SEVERANCE TAXES OR FEES DEFINED.—For purposes of subsection (a), 'severance taxes or fees' includes any tax or fee, by whatever name called, levied, or collected upon coal or upon any improvements or other rights, property, or assets produced, owned, or utilized in connection with the production of coal except for income, sales, property, or other similar taxes or fees of general application which are not disproportionately imposed thereon.".

(b) The table of sections for such Act is amended by inserting after the item relating to section 807 the following new item:

"Sec. 808. Coal for powerplant and industrial conversion.".

H.R. 6654, introduced by Mr. Devine (for himself, Mr. Taylor, and Mr. Hopkins) on February 27, 1980,
Cosponsored on April 22, 1980, by:
Mr. Collins of Texas, Mr. Hinson, Mr. Tauke, Mr. Petri, Mr. Bedell, Mr. Horton, Mr. Ashley, Mr. Vander Jagt, Mr. Benjamin, Mr. Bowen, Mr. Lott, Mr. Grassley, and Mr. Frost,
is as follows:

A BILL

To further the objectives of national energy policy of conserving oil and natural gas through removing excessive burdens on production of coal.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That the Congress finds that, in order to alleviate the national energy emergency, reduce national dependence on petroleum imports, encourage the highest and best use of domestic petroleum and natural gas, and enhance interstate commerce by promoting increased reliance on our national reserves of coal for the generation of electricity and power, it is neces-**

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"(b) For purposes of subsection (a), 'severance taxes or fees' include any tax or fee, by whatever name called, levied or collected upon coal or upon any improvements or other rights, property, or assets produced, owned, or utilized in connection with the production of coal except for income,

sales, property or other similar taxes or fees of general application which are not disproportionately imposed thereon.".

I

96TH CONGRESS
2D SESSION

H. R. 7163

To amend the Powerplant and Industrial Fuel Use Act of 1978 to further the objectives of national energy policy of conserving oil and natural resources through removing excessive burdens on production of coal.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 1980

Mr. KAZEN introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

---

A BILL

To amend the Powerplant and Industrial Fuel Use Act of 1978 to further the objectives of national energy policy of conserving oil and natural resources through removing excessive burdens on production of coal.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that, in order to alleviate the national energy emergency, reduce national dependence on petroleum imports, encourage the highest and best use of domestic petroleum and natural gas, and enhance interstate commerce by promoting increased reliance on our national reserves of coal for the generation of electricity and power, it is necessary to remove excessive burdens on production of coal used in powerplants and major fuel-burning installations.

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(b) The table of sections for such Act is amended by inserting after the item relating to section 807 the following new item:

"Sec. 808. Coal for powerplant and industrial conversion.".

Mr. SHARP. I ask unanimous consent that we place in the record the statements of Congressman Sam Devine, a member of the Commerce Committee, Congressman Dick Cheney of Wyoming, and Senator Alan K. Simpson of Wyoming, as though read.

[The statements of Congressmen Samuel L. Devine and Richard Bruce Cheney and Senator Alan K. Simpson follow:]

STATEMENT OF HON. SAMUEL L. DEVINE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. DEVINE. Mr. Chairman and my distinguished colleagues on the committee, thank you for the opportunity to testify today on behalf of my bill, H.R. 6654. I introduced this bill with the object of furthering the purposes of legislation which has been reported by this committee over the past several years, for example, the Energy Supply and Environmental Coordination Act of 1974, the Energy Policy and Conservation Act of 1975, and the Fuel Use Act of 1978. The overriding goal of these laws is a familiar one: To reduce American reliance on costly foreign oil by encouraging utilities and industrial oil burners to convert to an abundant domestic resource—coal.

In requiring that American utilities and industry reduce their consumption of petroleum, these laws address an energy problem with a foreign origin: The rapidly increasing cost and now unstable supply conditions of OPEC oil. My bill addresses a developing energy problem with a domestic origin: The formidably high coal severance taxes imposed by two major coal-producing States, Montana and Wyoming, who through exploitative taxation of coal have become an OPEC within our own borders. My bill would limit these huge taxes—30 percent for the principal such tax in Montana and 17 percent in Wyoming—to a more reasonable rate of 12.5 percent, which is not now exceeded by any other energy-producing State in this Nation.

Before discussing the solution, however, I would like to make clear to you the dimensions of the problem it seeks to correct. First, a word about the term "severance taxes": The term is defined in H.R. 6654 to include the sum of all taxes and fees which are imposed by a State or its local authorities on coal or coal producing property. Although such taxes may be labeled with a variety of names, they have the same impact on the American energy situation, and it is this total impact which H.R. 6654 is intended to alleviate.

First, Mr. Chairman, the severance taxes levied by Montana and Wyoming are clearly excessive. They are greater by a considerable margin than taxes imposed on any energy resource—oil, gas, or coal—by any other State. The great majority of other energy-producing States tax their resources at levels well below 10 percent. Some coal-producing States, such as Pennsylvania, have no severance taxes at all—and the State of Texas, which has traditionally supplied much of our Nation's energy needs with oil, has kept its oil severance tax below 5 percent. With total coal severance taxes of 17 percent and over 30 percent, Wyoming and Montana are extracting energy levies two, three, four, or even five times as great as their fellow energy-producing States.

Moreover, these exorbitant taxes affect a considerable proportion of our Nation's coal. An overwhelming portion—47 percent—of U.S. coal reserves is located in the States of Montana and Wyoming alone, and demand created by national energy policy is expected to create a surge in production from these reserves in the coming decades. In April 1979, the Department of Energy predicted that coal production from the Great Plains States would have to jump from 86 million tons in 1977 to 225 million tons in 1985 and to 536 million tons by 1990 in order to meet this new demand.

These reserves in Montana and Wyoming are not only vast. They are also among the cleanest coal deposits in the Nation. For example, very low-sulphur coal, containing less than 1 percent sulphur, accounts for 94 percent of the coal in Montana, compared with only 30 percent of the coal in the rest of the Nation. The Department of Energy is now pursuing an aggressive program of utility coal conversion mandated by the Fuel Use Act of 1978. If required conversions are to proceed on schedule and still meet important Clean Air Act standards, many converting companies will have to rely on low-sulphur coal which can be burned to meet environmental standards without the installation of tremendously expensive sulphur cleaning equipment. That low-sulphur coal is western coal.

In short, Mr. Chairman, the coal produced by Montana and Wyoming, because of its clean burning qualities and its abundance, is critical to America's energy needs now and in the coming decades. I think it is obvious that a resource of such importance to the energy goals of the entire Nation should not be burdened with excessive, unfair and unnecessary costs. The severance tax costs imposed on coal production by Montana and Wyoming have a grave and serious impact on this Nation in two ways. First, they have a direct inhibiting effect on coal production—exactly contrary to the greatly increased production of coal which will be necessary to effectuate national energy policy. Montana's own production figures show that immediately after the passage of Montana's 30 percent severance tax law in 1975, the rate of annual increases in coal production dropped precipitously. Prior to the imposition of the tax, Montana coal production was growing at an average annual compound growth rate of 40 percent. In the 3 years since that time, this growth rate has plummeted to 6.5 annually.

The second and perhaps gravest impact of these severance taxes is their direct inflationary effect on American consumers. Most of the coal produced by Montana and Wyoming is burned by utilities to produce electricity. These utilities pay the full severance tax costs in their coal prices and, through the operation of the fuel adjustment clause, 90 percent to 100 percent of the cost is passed directly to utility ratepayers. It is a cost without a benefit—dollars added to utility bills which represent no return to consumers in terms of greater efficiency or better service. Moreover, the great majority of the ratepayers who bear the burden of these excessive severance taxes are a captive market—citizens of 20 other States, throughout the Southwest and Midwest, who have absolutely no control over taxes levied by Montana and Wyoming. In 1978 consumers in these States paid approximately $44 million in severance taxes to Montana and $66 million in severance taxes to Wyoming, a total of over $100 million in captive taxes. Citizens of my own

State of Ohio contributed nearly $5 million to this sum. What these consumers are experiencing at the hands of Montana and Wyoming is a modern form of a venerable complaint: Taxation without representation. It is no less severe and no less unfair than the taxation without representation from which the early Americans rebelled 200 years ago.

In my view, Mr. Chairman, practices and policies which have such a punitive and exploitative effect on urgent national energy goals and American consumers can only be justified by demonstrable necessity. But Montana and Wyoming can demonstrate no such need. Their current tax levels far exceed any costs these States bear to provide services and infrastructure to support coal production. In addition to their severance tax earnings, both States receive millions of Federal dollars annually in the form of royalty rebates for coal produced in Federal lands, as well as direct money grants authorized by the Fuel Use Act to support coal mining in general. In 1978, Montana received about $1.5 million in Federal aid for coal production, and Wyoming, with greater coal production, received about $4 million. In fact, both States are earning so much in excess severance tax revenues that they are able to place portions of their severance proceeds in permanent trust funds to collect interest for the future. Montana's trust fund absorbs a full half of its severance tax revenues. The interest from this trust fund may be used to reduce State property taxes, and the principal is insulated from current appropriations by a requirement that three-fourths of the legislature must vote to spend it. I can imagine no more powerful demonstration of the fact that the need for coal severance taxes is far from commensurate with the immense sums which Montana and Wyoming now wring from the pockets of out-of-state consumers.

In sum, Mr. Chairman, the problem addressed by H.R. 6654 is one which threatens paramount national energy policy goals and the well-being of American consumers without any concomitant cost justification. And it is a problem which threatens to expand, as other coal-producing States respond to the lure of these States' success in exploiting coal production in their States through unbridled taxation. Indeed, the Wyoming legislature is now considering a bill which would close the gap with Montana by adding another 5 percent to Wyoming's severance taxes.

It is not often that we are faced with so compelling a case for remedial action by the Federal government. The remedy contained in my bill, H.R. 6654, is a simple one. As I have said, it merely places a limit of 12.5 percent on the sum of State and local taxes which may be imposed on coal which is destined for shipment in interstate commerce for use in electric powerplants and major fuel-burning installations. The bill does not unconstitutionally interfere with State taxing powers; nor does it in any way prescribe or restrict the choice of methods through which this limitation may be administered by the taxing States. H.R. 6654 simply implements the settled authority of the Federal Government to regulate interstate commerce in the national interest. In so doing, it would return to consumers the "windfall profits" now earned by two major coal-producing States.

For many months, this Congress has pursued the difficult effort of enacting legislation which would return windfall oil profits to American consumers and thereby aid in the pursuit of American independence from imported oil. My bill, H.R. 6654, is offered with the same goals and effects in mind. I am fully convinced of the urgent, immediate need for such legislation and confident in recommending H.R. 6654 for the favorable consideration of this committee and the support of all my congressional colleagues.

Once again, Mr. Chairman, thank you for the opportunity to address these remarks to the committee today.

STATEMENT OF HON. RICHARD BRUCE CHENEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mr. Cheney. Mr. Chairman, I very much appreciate the opportunity to present this statement on proposed Federal limitations on State severance taxes, such as the bills introduced by Representatives Sharp, Pickle, and Devine, for the consideration of the subcommittee. I understand that there will be additional hearings on this measure, with an opportunity provided for those most directly affected, such as the State of Wyoming, to formally present their views. For that reason, today I will not attempt a full presentation of my views in opposition to this legislation but will instead state a number of the issues I believe must be addressed if this legislation is to be considered on its merits.

First. Is it clear that the Federal Government has the power under the Constitution to limit State taxation in this way? What difference is there in principle between a limitation on State severance taxes and a limitation on State income taxes, property or corporation taxes, or sales and franchise taxes? Isn't the power to prohibit taxation an even greater power than the power to tax and, consequently, one which has historically been extremely limited in its application? To take the most absurd possible case, would the Federal Government have the power to eliminate all State taxes?

Second. Who will pay for the social and economic impacts of Western energy development? I hope it is clear to members of this subcommittee that Wyoming and other Western States will be required to spend literally hundreds of millions, and perhaps billions, of dollars to finance the energy-related growth of the coming decade or two. Currently, the State of Wyoming expects to pay for much of this development through the severance tax. Without the severance tax, who will finance this development?

Third. From the point of view of equity and efficiency, who should pay the costs of increased coal development in Wyoming? Should these costs be borne by coal consumers, such as those in Texas, or by citizens of coal producing States who may have no involvement in the coal industry whatsoever?

Fourth. What has caused the increase in the price of energy produced from coal? It seems to me that if we are to deal with the rising cost of coal-fired energy, we must first know precisely what the elements of cost of this energy are. I have seen several estimates of these elements which indicate that severance taxes are, at most, a very minor fraction of the total delivered cost of power.

Thank you very much.

STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, as your subcommittee on energy and power begins its consideration of H.R. 6625 and H.R. 6654, I would consider it a most useful step for your subcommittee to review the very serious problems presented by this proposed legislation. My primary opposition toward the placing of a Federal ceiling on the amount of a mineral severance tax which a coal producing State could levy within its own boundaries is founded on the basic notion that the pending bill violates the first rules of sensible legislation. This rule holds that for every complex issue of public policy, there exists a simple and correct solution. The fundamental point of departure for both bills is the philosophy that somehow—by enacting mineral severance taxes—that coal producing States are engaged in a predatory tax policy which is akin to the sinister machinations of OPEC. That concept fails clearly upon careful analysis.

The justification for sovereign States to levy its mineral severance tax on the extraction of its mineral resources is defensible from many points.

First, there is the well accepted principal equity in public policy which holds that those who benefit to the greatest degree and in the most direct fashion should indeed assume the burdens of paying for those benefits. Within the context of the use of coal resources to produce electrical power, that principle would dictate that those electric rate payers who have the benefit of power generated from the combustion of coal resources, would assume a portion of the cost of providing those fuel resources.

The social and environmental costs which Western States are expected to bear in the development of coal within the scope of a national energy policy are visible to anyone who has seen the surface mines, powerplants, coal unit trains, trailer camps, and the modular school units in my own State and neighboring areas in Montana and Colorado. These graphic costs are being born by producing States. The mineral severance tax aids in distributing a portion of these costs to consuming States.

The concept of a mineral severance tax is also defensible on the principle that as a depletable and finite stock of resources is mined, the resource should be replaced by a capital fund. As a member of the Wyoming Legislature for 14 years, I point with pride to the efforts of the people of the State of Wyoming in establishing a permanent mineral trust fund and directing that revenues from the development of Wyoming's mineral resources would go into an inviolate capital account. Beyond this trust fund, revenues have been directed to mitigate the adverse effects upon local communities of the mineral development needed to meet our Nation's energy appetite.

Earmarked accounts have been established for impact assistance to communities, construction of highways and other capital facilities, and for the development of water resources. At a time when serious inflationary and budgetary pressures are being laid at the door of Congress it seems that we would applaud such a local effort rather than view this as some spurius act to rip off the electric ratepayer. For without this local effort the Federal Treasury would be called upon to defray the social, economic, and environmental cost now being experienced in the coal producing regions of this Nation.

The question of the appropriate level of mineral taxation is one which has been debated in the halls of State capitols long before it found its way into this Congress. I can assure you that a keen understanding exists in western mineral producing States that is very necessary to maintain a strong and viable coal industry, more for the sake of the employment and real property tax base that those activities provide, rather than the ability to export taxes through a mineral severance tax scheme.

Contrary arguments made before this subcommittee would seem to ignore the basic proposition that the coal producing States recognize that there is a more compelling State interest in a strong local economy providing jobs than for any interest to lay on a burdensome severance tax. The ability to maintain coal markets and the relationship that severance tax may have to the competitiveness of western coal is of paramount concern in each instance when the issue of severance tax has come before the legislation and the people of the State of Wyoming.

Mr. Chairman, I urge your subcommittee to develop a complete picture of the real cost components which account for the delivered price of coal to those districts where the sponsors of this legislation reside. In 1980, the average price for a ton of Wyoming coal will be about $8.28 with a current severance tax at 10.5 percent on the contract price of the coal. The average severance tax per ton of Wyoming coal will amount to $0.87. If local property taxes are added to the level of State mineral severance tax, the total tax levied on a ton of coal will amount to $1.40.

Then please consider the coal haulage rates charged by railroads. For example, the freight charges are $19.25 per ton to haul coal from the Belair Mines south of Gillette, Wyo., to a powerplant in Elmendorf, Tex. Rail charges generally will range from $12 to $19 per ton for markets served by Powder River Basin coal, and rate increases are of course anticipated. In fact, some coal haulage rates have already risen over 50 percent between 1973 and 1979. Obviously transportation costs then have a much greater influence on the cost of marketability of western coal than severance tax.

This subcommittee should also consider and assign proper cost allocation to such coal resource extraction components as: Mining costs, reclamation costs, surface owner payments, landowner royalties, blacklung insurance, abandoned mine reclamation funds charges, bonding costs, Federal withholding taxes, workmen's compensation, Federal unemployment tax, union pension plans, union dues, construction of the energy producing facility, rail transportation charges, and return on investment.

All of these factors—in addition to State severance and ad valorum tax—must be blended in order to determined where the real unfair burden on coal costs has crept into the consumer's electric bill.

Consideration of the per kilowatt hour cost of electricity makes it necessary that your committee also consider the relationship between the cost of fuel resources and these many factors which are cranked into the utility rate base. Specifically, I direct you to consider the cost of powerplant construction, compliance with State and national environmental controls, and these labor and other costs. All of these cost factors are more significant than State severance taxes—perhaps not more emotionally or dramatically significant—but certainly more realistically and honestly significant.

Assuming a 7,000 kilowatt-hour per year electric consumption which is the maximum average consumption of the households in the United States, the Wyoming severance and ad valorum tax on coal would add approximately $0.53 to the monthly electric bill. In areas where electricity consumption is higher, due to air conditioning or electric heating, that amount would be proportionately greater. An electricity consumer in Elmendorf, Tex., will find that $7.22 of his monthly electric bill is due to coal transportation costs above—without even considering higher than average consumption rates. Who is being fooled in this process? Obviously, the consumer who is stirred by the presentation of these distorted facts.

Finally, from the sole prospective of national policy, the legislation before this committee poses serious questions about the role of Congress in limiting State taxes of any sort where there is an issue of consideration of tax impact on regionally located production centers. This would require your committee to consider whether or not the total array of State taxes should be considered.

For instance, those States located in the midwest which is the regional center of production for automobiles, heavy machinery and other manufactured goods may in fact be using their State corporate and possessory interest tax structure to export their tax burden to consumers in other parts of the country. Adoption of this legislation would pose a dangerous national precedent. For if Congress is able to restrict the amount of taxation which the mining States are able to levy on coal resources then why should not Congress also act under its commerce powers to restrict the level of State taxation in the farm belt States, in the manufacturing States, the timbering regions of America, and any other State which sustains within its borders a regional or national center of production?

Mr. Chairman, in conclusion, I urge your subcommittee not to report this legislation. This legislation presents a dangerous national precedent as to the ability of Congress to limit the sovereign States in their assessment of severance taxation—a tax that is primarily used to offset the grave and very real social and environmental costs which are borne in fulfillment of our national energy policy as well as to develop a permanent capital account after the depletion of those natural resources. If the true concern of the sponsors of this legislation is to deal with the increasing fuel costs as they related to the price of electricity then you must consider all of the component costs of coal as itemized in my statement, as well as computing those factors which are specifically found in the ratemaking structure for all utility charges. Basic fairness demands that.

My two fine congressional colleagues from Wyoming, Senator Malcolm Wallop and Representative Dick Cheney, look forward to the opportunity of presenting testimony before the subcommittee and would have been present today had there been adequacy of notice for proper preparation of this critically important issue to the people of our State. We shall await notice from you as to the date and time of further hearings.

I will appreciate your including this statement in the record of the proceedings on this date.

Thank you.

Mr. Sharp. We will hear first from a panel of three witnesses, Mr. Oberstar from Minnesota, Mr. Vento from Minnesota, and Senator Don Riegle from Michigan.

If the three of you will come foward we will be delighted to hear from you.

Mr. Oberstar. Senator, we will defer to you.

STATEMENTS OF HON. DONALD W. RIEGLE, JR., A U.S. SENATOR FROM THE STATE OF MICHIGAN; HON. BRUCE F. VENTO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA; AND HON. JAMES L. OBERSTAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Senator Riegle. It is a pleasure to be here with my colleagues and back on the House side of the Capitol.

Mr. Chairman and members of the subcommittee, I want to thank you for this opportunity to testify on behalf of H.R. 6625 and H.R. 6654.

I am here as a Representative of the State of Michigan and as a Member of this Congress who is gravely concerned about two of the most critical problems facing the Nation today: Energy and inflation.

The bills before this subcommittee are intended to alleviate both of these concerns by addressing a growing problem which contributes both to inflation and to our Nation's energy predicament: Excessive and unfair severance taxes levied on coal production.

The two bills that I refer to would limit State severance taxes on coal shipped in interstate commerce to 12.5 percent. Presently, only Montana and Wyoming have taxes above 12.5 percent. These States' coal severance taxes, 30 percent for the principal severance tax in Montana and 17 percent in Wyoming, impose higher tax rates by far than any other energy taxes in the Nation.

They impose tremendous financial burdens on millions of coal consumers. In addition, they threaten to obstruct the progress of increased coal use pursuant to national policy which directs utilities and major fuel-burning installations to convert from oil to coal in order to reduce our national dependence on imported oil.

The vital importance of coal to national energy policy has been stressed repeatedly. President Carter, in announcing the second national energy plan in May 1979, unequivocally committed this country to the most aggressive and energetic development of this Nation's coal, stating:

> Coal, the Nation's most abundant fossil energy resource, should be used in place of oil and gas wherever economically and environmentally feasible.

It is a fact that our coal reserves are so vast that they exceed all of the oil reserves of the OPEC nations. An enormous 200 to 300 billion tons of economically recoverable American coal are available to fill the energy needs of the future.

A substantial portion of these reserves, 47 percent, is located in two States: Montana and Wyoming. This coal is especially important to national policy because it is low in sulphur and is capable of being burned at less cost to the environment than higher sulphur coal produced elsewhere in the Nation.

These States have not hestitated to take advantage of their vast deposits of low-sulphur coal and of the enhanced value placed on these resources by national policy. In 1975, immediately after the passage of the first Federal coal conversion legislation in 1974, Montana increased its tax from a modest flat rate of 12 cents to 4 cents per ton to a whopping 30 percent of the value of coal produced.

The dollar value represented by that rate has of course risen as a result of inflation. Today it is as much as $3 per ton and of course it will increase as coal prices continue to escalate in coming years.

Wyoming has not been far behind Montana in the drive to take advantage of its coal reserves. Today its severance taxes total 17 percent, and a bill now under consideration in the State legislature would add another 5 percent to this level.

Mr. Chairman, although these excessive coal taxes are levied by only two States because of the unique position these States occupy in controlling nearly half of America's coal, their severance taxes affect consumers in as many as 20 other States in the Southwest and Midwest, including Michigan.

In 1978, Michigan utilities purchased nearly 2 million tons of Montana coal, paying about $3.5 million in severance taxes, which was passed along to consumers in thousands of households in the State. These consumers, whom I represent, reap no benefits in improved service or greater efficiency from the millions of dollars they pay.

Nevertheless, they are unable to control the burden of the severance tax they bear for the simple reason that they do not vote in the coal producing State and have no representation in the legislature which sets the rates of the severance taxes.

In a very real sense, they are hostage to the exploitative severance tax practices of another State. Frankly, I find it unreasonable that citizens of one State must sit helplessly by and contribute millions of dollars to swell the treasury of another State.

I would like to stress that this is not just a short-term problem. Because of the long-term nature of coal supply contracts, citizens of Michigan and 19 other States will be forced to pay the high severance taxes of Montana and Wyoming until 1990 and even until the year 2000, if some remedial steps are not taken now.

Moreover, consumers in other coal consuming States will begin to feel the pinch of severance tax increases as other coal-producing States yield to the compelling temptation to follow the lead set by Montana and Wyoming.

I want to emphasize that I have no quarrel with the concept of severance taxes, nor do I underestimate the cost impact of mining activities on State governments. But Montana and Wyoming are demonstrably and considerably overcompensated for the costs of coal production in their States.

Because 70 to 75 percent of known coal reserves in Montana and Wyoming are located on Federal lands, these States receive considerable Federal revenues in coal royalty rebates pursuant to the

Mineral Leasing Act of 1920, and coal impact aid pursuant to the Fuel Use Act of 1978.

In 1978, Montana collected about $1.5 million in coal-related revenue from the Federal Government and Wyoming, with greater coal production, received nearly $4 million. In addition to those Federal revenues, the States are compensated for other coal-related costs by the coal producing companies themselves, who must bear the full costs of land reclamation necessitated by coal production.

The fact is that the proceeds of the severance taxes of these States exceed coal related costs by such a considerable margin that both States place portions of their severance taxes in trust funds to collect interest for the future. For example, Montana's trust fund absorbs a full half of its severance tax revenues.

In sum, Mr. Chairman, I believe that there is an urgent need for curtailment of runaway coal severance taxes. Excessive severance taxes are inflationary; they are contrary to the national energy policy; and they exploit millions of out-of-State consumers who are powerless to control them.

Therefore, Mr. Chairman, I support in principle legislation before this subcommittee which would require those few States whose coal severance taxes now exceed 12.5 percent to lower their taxes and to prevent all other States from raising their severance taxes above 12.5 percent in the future lest they join the trend toward coal tax exploitation and aggravate this already serious national problem.

I want to say again to my close colleagues that I appreciate their allowing me to proceed first, and I will be here for a time because I want to hear my colleagues and I must go for a hearing on the Senate side as well, but I thank the subcommittee for the opportunity to testify today.

Mr. SHARP. Thank you.

Mr. Vento?

STATEMENT OF HON. BRUCE F. VENTO

Mr. VENTO. Mr. Chairman, thank you for the opportunity to testify before the Energy and Power Subcommittee of the Interstate and Foreign Commerce Committee on H.R. 6625.

This is the Coal Severance Tax Relief bill which I am co-sponsoring with my colleague from Minnesota and 39 other House Members.

H.R. 6625 would limit to 12.5 percent the level of severance taxes which may be imposed by States on coal shipments. It is an extremely important bill because it would prevent any individual State from frustrating national poicy through the implementation of unfair and unreasonable taxes on coal resources.

Since the 1973-74 oil embargo, every Congress and administration has attempted to alleviate our growing national energy problems and wean the United States from its dependence on foreign oil.

This national policy has already been reflected in Federal legislation mandating that electric utilities and industrial plants decrease their consumption of oil and gas by converting to coal. Just last week in a major policy address to the Nation, President Carter reiterated that goal of converting oil and gas-fueled generating plants to coal.

This national emphasis has vastly increased the demand for coal production which is estimated by the Department of Energy to double by 1990.

Unfortunately, a few coal producing States have decided to take advantage of this situation by imposing massive severance taxes on their coal resources, an action that has the same punishing effects on the American consumer as the enormous OPEC price increases in recent years.

Montana and Wyoming provide the most illustrative example of what is happening in the coal market today. Montana and Wyoming are unique coal States.

Together they hold 47 percent of the coal in the United States, much of it on Federal land.

In 1977 these States supplied 10 percent of the U.S. coal demand. By 1990, it is estimated they will supply one-third of the Nation's coal. Montana alone has coal reserves sufficient to supply the total U.S. needs for the next 50 years. And Western coal is the most desirable because it has a low sulphur content which facilitates compliance with national air standards.

In the last decade, Montana has raised its tax on sub-bituminous coal three times. In 1971, it was raised from 6 to 8 cents a ton. In 1973 it was raised to 34 cents a ton. In 1975 it was raised to the current 30 percent rate which figures to an average $1.95 a ton at today's prices, excluding costs for freight and handling.

Wyoming has followed suit with a 17 percent rate. The severance tax revenues for these States have been highly lucrative. Montana collected approximately $40 million on coal in 1978 and Wyoming collected more than $66 million. Financial experts estimate that by 2010 Montana will have collected more than $20 billion through continued implementation of the 30 percent rate.

Minnesota, by way of comparison, has large reserves of iron ore which are processed into taconite and considered a prime resource. My colleague from the eighth district can tell you much more about taconite than I can.

The severance taxes on taconite average about 6.4 percent a ton, a far cry from the rates we are talking about here.

There is no true relation between the rates these States are charging and their projected or current revenue needs. Most of the coal produced in Montana and Wyoming is mined on Federal lands. Fifty percent of all coal royalties collected by the Federal Government goes directly to the States. The Federal Government also provides these States with direct grants, authorized by the Fuel Use Act of 1978, to ease the impact on coal mining.

It is estimated that the total governmental costs associated with coal mining in Montana—schools, roads, police, fire and health protection, environmental protection, and the like—probably amount to 2 cents a ton. Montana's average severance tax is $1.93 a ton higher than these revenue needs.

In addition, the vast majority of Montana coal resources are exported. Thus the severance tax is really a 30 percent State export duty. The burden is being carried by taxpayers and consumers in other States. The normal political redress for such grievances doesn't work in this instance. Those who are paying the unreasonable State taxes don't vote in Montana.

Montana's coal severance tax has had an immediate and direct impact on my home State of Minnesota. In 1978, State consumers paid $14.1 million in severance taxes on Montana coal. In 1979 we paid $21.2 million, and in 1980, our payments are projected to be $24 million.

These taxes are passed directly to the utility customer, whether a large industry, small business or private homeowner.

Northern States Power Co., the utility serving the Twin Cities area, paid $15 million in severance taxes on Montana coal in 1979. This is 2 percent of the utility's total revenues for the year.

We can't kid ourselves that consumers aren't paying the bill. They are. Directly, through fuel adjustment pass-through clauses, large industrial users paid about 2½ percent of their electric bills for Montana taxes; small business paid about 2 percent, and the average residential user paid between 2 and 3 percent.

In addition, private consumers bore indirect costs. The larger users passed on their increased utility costs to their customers either in product or service charges to cover their operational costs.

Last year I joined the Public Service Commissions in Minnesota and North Dakota as an official intervenor before the Interstate Commerce Commission to protest proposed 38 percent rate hikes for rail hauling of coal from Montana to Minnesota.

The rate increases added $21 million to the costs of transporting coal and an average 3 percent to the utility bills of most Minnesota consumers. Much of the proposed increases were attributed to the enormous capital costs of efficiently moving the coal. How ironic that in this situation of higher coal prices and railroad transportation costs these States would impose such a drastic increase in their severance taxes.

One of the major points raised during the ICC case, which is still on appeal, is that the railroad had a monopolistic hold on the coal business both in terms of owning the means of transportation between Minnesota and Montana and, in one case, owning land on which the coal was mined.

In addition, Minnesota utilities, it was shown, are locked into long-term purchase agreements for Western coal. Thus, Minnesota utilities and their customers are powerless in terms of the severance taxes Montana or Wyoming impose. They are a captive audience. Every time the price of coal at the mine increases, so does the severance tax.

I find the existing coal severance taxes grossly inequitable. A few States are being allowed to reap windfalls on national resources at the expense of the rest of the Nation. This was hardly what Congress envisioned when it mandated increased use of coal in 1974, 1975, and 1978. And it is hardly what the President had in mind when he spoke last week.

We must understand the interdependent nature of this country if we are ever going to achieve a greater degree of energy independence. The proper power to check the trend toward even higher coal severance taxes lies with the Federal Government.

Congress can and should institute a fair and reasonable measure which would restore equity and support our energy policy without depriving coal-producing States of funds which they legitimately need. We do not want to deny reasonable tax revenues to a State. But we cannot allow the manipulation now occurring with regard to coal resources to continue.

Energy policy must be based upon a foundation of certainty and predictable costs. Minnesotans want equitable treatment regarding this tax and the environmental, social and economic impact on our society.

I urge your positive consideration and action on H.R. 6625.

Thank you.

Mr. Sharp. Thank you, Mr. Vento.

Mr. Oberstar?

STATEMENT OF HON. JAMES L. OBERSTAR

Mr. Oberstar. Thank you, Mr. Chairman.

I ask unanimous consent that my statement appear in the record in full, and I would briefly summarize it.

Mr. Sharp. Without objection, so ordered. [See p. 25.]

Mr. Oberstar. The main points have been made by my colleagues.

The case is clear, I think, that these two States are in violation of at least the spirit, if perhaps not the letter, of the Interstate Commerce Clause of the Constitution.

The founders of the Constitution intended that we should have uniformity in this country and not allow certain States to exploit others for the purpose of expanding the economic horizons of this country and for the purpose of avoiding the fragmentation that occurred in the European countries.

This is the very kind of practice which leads to fragmentation, which leads to States exploiting others. There are some 26 States which depend on coal derived from Montana and Wyoming, and those States are frankly exploiting their unique position to the disadvantage of other consumers in other States.

That is simply a practice that should not be condoned. We are not here to oppose severance taxes. We are here to argue for uniformity in severance taxes, or at least uniformity in terms of a ceiling.

Other States have severance taxes. Texas has a severance tax of 4.6 percent on oil and 7.5 percent on natural gas. Minnesota has a severance tax on iron or agglomerates which are called, in my country, taconite-lead pellets which we ship to fuel the steel industry of this country.

The taconite takes 7.8 percent. We have another one of 3.6 percent. We have a semitaconite severance tax of 0.8 percent.

There are other severance taxes in other States. Kentucky has 4.6 percent; Nevada, 5 percent; New Mexico, 0.75 percent; Idaho, 2 percent; West Virginia, 3.5 percent. Why, on a $10 value of coal, there should be a $3 plus severance tax depending on the year in which the contract was negotiated is beyond me. It is simply exploitation in a time of national vulnerability and consumers in other States who don't have the say on how that tax is being levied are being asked to pay it.

This subcommittee, in furtherance of the national energy policy programs that the Congress has laid down and that the President is carrying out, should move to adopt the legislation at hand and to establish a uniform basis for levying a severance tax.

As to the 12.5 percent, there is nothing particularly magic about that. It is just considerably above all the other severance taxes for coal in the whole country, in some cases three and four times higher.

We think it is a very fair and adequate tax. My colleague from Minnesota said we in Minnesota last year paid $21 million in severance taxes. One company alone paid $14 million in severance taxes on $47 million of coal.

I am here on behalf of the consumers in northern Minnesota in my district which extends all the way down to the northern fringe of the twin cities, and on behalf, frankly, of all of the coal consumers outside those two States for tax equity and fairness in our energy policy.

Thank you.

[Mr. Oberstar's prepared statement follows:]

PREPARED STATEMENT OF JAMES L. OBERSTAR

Mr. Chairman, Members of the Subcommittee. I speak in support of this bill which proposes to place a reasonable ceiling on the severance tax rate of coal. I represent a mining district of more than 15,000 miners and have, myself, worked in the mines. I recognize the right of a state and people to receive a fair return on minerals taken from their state. This bill will provide for such a return.

The past decade has seen a dramatic shift in the United States' energy policy. As oil and gas have become scarce, become tools of foreign diplomacy, and as prices have skyrocketted, our nation realized the necessity of becoming "energy independent." OPEC's monopoly and resulting price manipulation without any relationship to production costs is reflected at the gas pumps in prices of $1.20+ per gallon. Energy shortages, too, have spurred America to adopt new energy policies of conservation, alternative fuel development, and conversion to more abundant sources of energy, obtainable within our own boundaries.

These policies have been repeatedly recognized and reinforced through legislation and practice. The National Energy Plan, the Energy Policy and Conservation Act (1975), and five acts comprising the National Energy Act (1978) all emphasized the need for conversion to domestic coal. President Carter's energy policies are based on this underlying tenet. Concurrent with the evolution of these acts have been the decisions by public and private utilities, with the backing of their respective cities, to convert to the use of coal—specifically coal-fired boilers. The decisions of these utilities were based on carefully weighed figures which projected costs and abundancy of fossil fuels into the future. What could not be anticipated was the exhorbitant severance taxes placed on coal exported from the western states.

What has arisen in Montana and Wyoming is a domestic cartel. Montana's 30 percent severance tax and Wyoming's 17 percent severance tax are victimizing consumers in over 26 states. The utilities purchasing the coal have absolutely no say as to the tax rate and have no choice but to pass the costs on to the consumer.

These practices cannot be written off as a case of one industry cutting into the profits of another. Instead American consumers are absorbing in their fuel bills, the fluctuations in the costs of coal.

The rate of taxation by these states in inexcusable in light of several things. Ironically, 75 percent of the Montana coal reserves are federally-owned reserves! Other states have severance taxes on coal, iron ore, gas, oil, and taconite that do not even approach the level of taxation on Montana and Wyoming coal. Texas' severance tax on oil is only 4.6 percent and only 7.5 percent on natural gas. Minnesota's severance tax on iron ore agglomerates is 3.6 percent while the taconite tax is 7.8 percent. Semi-taconite severance tax in Minnesota is 0.8 percent!

In other coal-exporting states, none rivals the flagrant abuse of its resources as does Montana and Wyoming. Kentucky tax is only 4.6 percent, Nevada—5 percent, New Mexico—0.75 percent, and Idaho—2 percent. West Virginia only levies a tax of 3.5 percent.

To further the argument and draw a closer parallel to Opec's pricing practices, Montana's tax has no relationship to production costs or impact needs. 50 percent of Montana's severance tax revenues from coal are set aside in a Coal Tax Trust Fund.

These funds are to be left untouched. The remainder of the funds go to aid the economic impact on the towns and the state in such areas of education, highways, parks, environmental studies, etc. These latter costs are understandable for the most part. Yet Montana has chosen a policy that directly refutes that purpose of the Federal Government: to encourage conversion to coal and thwart efforts to unjustifiably escalate coal prices. The state is operating on the errant belief that the rest of the states in the Union should subsidize the future of Montana.

Further damaging our National Energy Policies, the 30 percent and 17 percent tax has forced cities to investigate the cost/benefit of importing coal from foreign sources such as Australia. San Antonio, the 10th largest city in the country, has indicated that it is in the midst of price negotiations abroad in its considerations of a shift from domestic to foreign dependence on coal. This city, which had the foresight in the early 70's to take the lead in conversion to coal, is now forced to look abroad for its fuel needs. On a national scale, it is inexcusable that Montana and Wyoming have created a situation that both inhibits conversion to coal and nullifies the nation's attempts to become independent of foreign energy supplies.

No documentation exists to justify the severance tax levels of these two states. In comparison, I would like to contrast the use of Minnesota severance taxes on taconite and iron ore. Our State demonstrates that appropriate application of severance taxes to natural resources can compensate economic impact while remaining well below the 10 percent level.

The taconite production tax base rate in Minnesota is $1.25/ton. This fluctuates directly with the steel index. The tax is presently (1979) around $1.60. This varies between companies according to the iron content of the taconite. In 1979, Minnesota had almost 55.4 million taxable tons of taconite. At $1.60/ton rates, this generated a revenue for the State of about $88.6 million. The distribution of these funds is as follows:

From the $1.25 tax base:

2½ cents to cities and towns for impact.

29 cents to schools (local impact).

21 cents to counties for impact (roads, etc.).

28 cents to a taconite property tax relief fund within the state. Companies don't pay property tax so this money is redistributed to affected localities.

2 cents to the Iron Range Resources and Rehabilitation Board which uses this for grants upon application to impacted areas.

12 to 13 cents to municipal government funds.

Amounts to $1.15 of the $1.25.

The remainder is distributed as follows:

2 to 3 cents to General Minnesota treasury.

One-third of the rest to a trust fund: The NE Minnesota Economic Protection Fund which by statute is to remain untouched for 25 years from the date of enactment (till 2002).

Two-thirds of this will go to the Taconite Environmental Protection Fund.

Therefore, at $16/ton and a $1.25 tax base, the severance tax amounts to 7.8 percent. At $25 and a $1.60 tax/ton, the tax is 6.4 percent. Thus Minnesota funds economic and environmental impact costs and perpetuates a general trust fund for the future without abusing the right to tax other states on natural resources within its boundaries.

While Minnesota reaps about $88 million from its taconite exports to all states, it must, at the same time, pay Montana and Wyoming alone, over $14 million in taxes on just $47 million of coal at mine value. This is immediately passed on to the consumer by state statute, as is the case in most states.

I think that the inequities are clear and that a ceiling on severance tax rates must be declared to prohibit and curb such practices in the future. Our nation must work together to encourage conversion to alternative energy sources, including coal. We must escape our volatile dependence upon other nations for energy sources. We must respect the interdependence of states on each other's natural resources and not exploit these God-given riches at our neighbor's expense.

Mr. SHARP. Thank you very much, Mr. Oberstar.

Thank you, gentlemen. We appreciate your being with us this morning, and we will move on to our next panel.

We have, from the State of Montana, Max Baucus and Representative Ron Marlenee.

Mr. MARLENEE. Mr. Chairman, let me say one word here.

We have heard some charges of excessive taxes, taking advantage, swallowing the Treasury, windfalls, exploitation. I would like the two Congressmen to stay until we finish our statements.

I yield to my good friend and colleague, Senator Baucus.

STATEMENTS OF HON. MAX BAUCUS, A U.S. SENATOR FROM THE STATE OF MONTANA; HON. RON MARLENEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA; MIKE GREELY, ATTORNEY GENERAL, STATE OF MONTANA; AND WILLIAM CHRISTIANSEN, ENERGY ADVISER, MONTANA DEPARTMENT OF JUSTICE

Senator BAUCUS. I understand that subsequent to our testimony you are going to be hearing testimony from a panel of two other Montanans, is that correct?

Mr. SHARP. Yes.

Senator BAUCUS. Mr. Chairman, I can sum up my position on H.R. 6625 in just a few short words.

It is unprecedented, unfair, and unreasonable.

It is one of the most blatant, disgusting examples of special interest legislation I have ever seen in my years in public office.

This proposal is being promoted by a handful of Midwestern and Southern electric companies who are willing to spend thousands of dollars each week in a thinly-veiled attempt to enact some of the most selfish legislation ever conceived.

And, on the bottom line, and this is important, Mr. Chairman, if they succeed, they will do virtually nothing to reduce the electric bills of their customers.

Mr. Chairman, a word about the Montana Coal Severance Tax. Montanans were told in the early seventies that our State's coal was the Nation's energy "ace in the hole."

And, we were concerned. We were concerned about the impact coal development would have on our State's social structure, its environment, and its ability to govern itself effectively.

Montana took several steps to insure that our coal will be developed and used by the rest of the Nation but without exploitation of our people and our land.

Montana enacted legislation in the seventies that was monumental: The Federal Stripmining Act is virtually a carbon copy of legislation enacted earlier in the Montana State Legislature.

The State established a Major Facility Siting Act to insure that coal-burning facilities are built to minimize environmental and socioeconomic damage. And Montana enacted a coal severance tax.

Montanans understand that they will and they must play a role in solving this Nation's energy crisis. But we also know that coal mining brings coal miners who need houses, schools, hospitals, roads, sewers, police, and fire protection, and other public services.

We know that coal mining creates whole new towns where once only prairie dogs lived. We know that all this costs money. Montana is not an industrial State. Virtually our entire income comes from natural resources: Wheat, cattle, copper, coal, lumber.

Because we have a small population and a small industrial base, and that is very important, our only means of raising revenue to deal with the costs of coal development is through taxation of the coal itself.

Opponents of the severance tax have made much of the fact that a proportion of severance tax proceeds are placed in a trust fund.

I should point out that Montana citizens voted 2 to 1 in 1976 to create this trust fund. They could just as easily have voted for immediate tax relief.

But we recognize that Montana's coal is a nonrenewable resource. Someday it is going to run out. Montanans have had long experience with natural resource development. We know that the costs of development do not end when the resources are gone. That is the reason for the trust fund.

Fabulous gold deposits and then fabulous copper reserves were exploited and sent out of State. Today these resources are largely gone. But the environmental and social damage remains, and is still being paid for by Montanans.

Montanans also watched the coal boom in Appalachia. We saw what happened when the boom turned to bust, the abject poverty, the ruined, sterile environment, the lack of economic opportunity.

Mr. Chairman, Montanans know we cannot come to the Federal Government for help in dealing with the problems of energy development. So, we have moved to fill this void ourselves by imposing a reasonsible tax on coal.

Recent stories in the newspaper have referred to Montanans as "blue-eyed Arabs." The proponents of this bill would have you believe that there really is a sheik of Great Falls or a shah of Billings, Mont.

But let's imagine for a moment what would happen if the tables were turned.

Let's imagine that Montana's utilities wanted to buy coal from someone else's district. Let's say yours, Mr. Chairman, Indiana; say one of the sponsors of H.R. 6625. Let's imagine that about half of that district was unpopulated land, which is the case in Montana, that covered rich coal deposits.

What would his attitude be then? Would he want his constituents to foot the bill for developing the coal used by Montana utilities? Would he want his constituents to pay for the roads, schools, hospitals, police and fire protection for the thousands of miners coming into his district to pay higher taxes so that Montanans could benefit from these deposits?

I find it hard to believe that any of this bill's sponsors would want the Federal Government to limit his State's ability to deal with the impacts of development.

Finally, Mr. Chairman, let's examine the cost of Montana's coal severance tax. On average, and listen closely, the severance tax adds less than 1 percent to the total costs of utilities that use Montana coal. Indiana's sales tax adds 2 percent to utility bills, but I am not here today arguing that this sales tax is exorbitant, unfair, or excessive tax profiteering.

In Minnesota, Montana's coal severance tax adds at most 2 percent to utility bills, and that was confirmed with the earlier testimony. They too agreed to 2 percent, but the Minnesota sales tax adds 4 percent to that same bill.

Which tax is too high? What would happen to the State's treasury if that 4 percent tax were abolished?

But, of course, if you are from Texas, you wouldn't have to ask that question. Their severance tax raised $1.2 billion in 1979, compared to only $59 million raised by Montana. Alaska's State energy taxes will raise $4.4 billion in 1980.

Every time a Montanan goes to the gas pump he pays a little of that Texas severance tax and a little of the Alaska severance tax. But, again, we are not here today asking for a limitation on their taxes.

No, Mr. Chairman, we are here today because some big-spending utilities are trying to deflect attention from their inability to reduce electricity rates. We are here today because those utilities are trying to create an election year scapegoat for their insufficient efforts to conserve energy and keep utility rates down.

While Montana's coal severance tax contributes less than 1 percent to the utility bills, the cost to construct and operate a coal-fired generating plant is 50 percent of that bill. And, transporting the coal from Montana is over one-quarter of that bill. Remember, the Montana coal severance tax contributes less than 1 percent.

In 1977, transportation accounted for about 60 percent of the delivered cost of Montana coal. In recent years, annual freight rate increases, and I am only talking about increases, have significantly exceeded the total amount of the Montana coal severance tax.

I suggest you turn to how we preserve competitive rail service and prevent unreasonable freight rates if we want to cut utility bills.

If proponents of this bill are serious about cutting utility rates for their constituents, they are barking up the wrong tree. Because even if they succeed, and I don't think they will, their constituents are not going to pay less for their electricity.

In summary, 30-percent coal severance tax sounds big, but it is not. It is effective only at 22 percent because of prior reductions taken out of it; so it is really only 22 percent.

Second, it is less than 1 percent of the cost of the average utility bill in this country.

The second point I want to make underlies the mammoth costs that we incur in Montana because of coal stripmining. This is not deep underground mining. It is stripmining. This is polluting the air. This is all of the towns that go up in the boom and bust cycle, and it is also disturbing the aquifers.

Montana depends on water. We don't know the degree to which coal mining will disturb those aquifers. That is why we have a trust fund. It does not rain in Montana like it does here today in Washington, D.C.

Our average annual rainfall in Montana is only about 14 inches a year.

The third point is this legislation, if adopted, establishes a pernicious precedent. It is limiting the State taxing owner. Now, if you want to have your State taxes limited by the Congress, go ahead and pass this bill, because it is going to be the opening shot in the war among the States.

If you want various different groups upset about some other States' taxes, enact this legislation. The model of our Nation is "e pluribus unum, one out of many."

We are together 50 States, and we have to work together to solve our energy crisis.

Montana for the first time is taking care of itself. We have been exploited by fur traders, copper industry, gold miners, you name it, and this is the first time that we are able to take care of ourselves and pay for the eventual costs that the exploitation of the natural resources has caused in our State.

That is why we have a trust fund. It is very low.

In summary, it is 1 percent only, less than 1 percent of the total utility bills to its customers.

Thank you, Mr. Chairman, for hearing us this morning.

Mr. SHARP. I think the Senator is a very effective and vigorous spokesman for his people and his causes.

Mr. GRAMM. I would like at this point, if I may, have a division of the testimonies and my 5 minutes.

Mr. SHARP. All right; the gentleman will have 5 minutes.

We would want to move along.

Mr. GRAMM. I thank the chairman for his indulgence.

Senator Baucus has spoken very frankly, and I want to speak very frankly.

I would like to take each of the points you made in turn and simply give the facts as I see them related to my experience from Texas as they compare to the points you made about Montana.

You have accused electrical utility companies of conspiring against Montana to take away your resources as if they are going to put those resources into profits, but every public utility in Texas has a passthrough clause, and every penny of your severance tax goes to the consumer of electricity, not to public utilities in Texas.

You talk about the cost of coal mining, but the two counties in Montana that produce the most coal have the lowest taxes.

You talk about Montana's coal as if it is going to run out. OPEC talks about OPEC oil as if it is going to run out. Texas oil is going to run out as well and, in fact, it has almost run out.

We produced that for the national interest, and we benefited from it by becoming a rich and powerful State like Montana can benefit in terms of jobs and economic growth.

You talk about the severance tax needed, but do you realize if Texas imposed a 30-percent severance tax on its oil and gas, it would cost the American consumer this year an additional $21.8 million in energy costs. Texas has not done it, and I don't think any other State ought to be able to do it as well.

I would like to talk about another fact which you conveniently left out. Seventy-five percent of the coal in Montana is on public lands, lands owned by all of the American people.

Production on public lands means that Montana gets 50 percent of the royalties. We have no significant public lands in Texas, and as a result we don't get any of the royalties to the treasury of the State of Texas as coming from the production of oil and gas except those that we tax.

You also conveniently left out that Montana is greatly benefited by the Fuel Use Act which provides assistance for exactly the same kinds of jobs that you claim are occurring in Montanan jobs that have occurred all over the country.

Finally, you talk about independent sales taxes. There are big differences between Indiana and Texas sales taxes and the tax that you are imposing on other States.

People in Indiana pay the Indiana sales tax, not people in Montana; and they vote on whether to impose the sales tax themselves. People in Texas don't vote on the Montana severance tax.

I am pleased to know Montana is taking care of itself, but I think that our country would be in a hell of a mess if every State took the attitude that we are going to power the rest of society.

Your figures about the percentage of the severance tax in terms of cost are true, but they are largely meaningless. Coal is a very heavy fuel and costs a lot to transport and the fact that those costs add on, simply adds to the reason why the argument should apply. We shouldn't allow one region to exploit the rest of the country.

Finally, Mr. Chairman, if at the beginning of our Nation, the east coast tried to impose the severance tax on timber, shipbuilding, coal and iron ore, had the South imposed a severance tax on the rest of the Nation on its agricultural products and its pulp, had Texas and Pennsylvania and Oklahoma and Louisiana imposed the tax on oil and gas, the Nation would have never grown.

I deplore this regionalism which has been produced by the crisis.

Mr. SHARP. Thank you.

I will give the gentleman a couple of minutes.

Senator BAUCUS. I want to thank the Congressman for making my argument. He has agreed with my figures: First, less than 1 percent of Montana's severance tax is the cost of the consumer's utility bill, and second, the cost of transporting coal is much greater than the utility cost. I want to thank the Congressman for agreeing with my figures and suggest very candidly and helpfully that the way we reduce utilities, therefore, is to attack those bigger items.

If half of the total cost is the construction, let's figure out a way to build powerplants more efficiently.

Mr. GRAMM. If we could have done that we would have done it a long time ago.

Senator BAUCUS. We must figure out some way to lower the freight rates or to develop a better freight system in this country. If less than 1 percent of your Texas utility bills is attributable to Montana coal severance tax, then we are barking up the wrong tree.

Mr. SHARP. The gentleman from Montana, Mr. Marlenee.

STATEMENT OF HON. RON MARLENEE

Mr. MARLENEE. Thank you, Mr. Chairman.

I am pleased that some of the colleagues who are making those charges are staying around, and I think I can answer in my testimony most of the questions raised by the gentleman from Texas who sits on our committee.

I think it is well that these hearings are being held on these bills right now at this moment, because I think now maybe the facts and figures can reach the general public and this committee.

The half truths and misinformation ruthlessly spread by the lobbyists for the huge utilities can be refuted. These same utilities have been unsuccessful in the courts in their attempts to achieve a reduction in the amount of the coal mining impact aid tax paid to Montana and that is what it is, an impact aid tax. It is misnamed a severance tax.

Now, they attempt to gain their ends by setting one group of people against another, the Texans against the Montanans, the Minnesotans against Montanans, and by flim-flamming Congress and this subcommittee into the passage of a utility relief bill, a utility relief bill that the court has turned down.

Let me chart the course I will take you through in my 10 minutes of testimony which will contain the documentation that will refute the fallacies being spread about Montana's severance tax.

What are some of those fallacies?

Montana taxes are exploitive. We have heard that over and over again this morning.

One, 75 percent of all the natural resource taxes are collected by Texas, Louisiana, Arkansas, New Mexico, and Oklahoma.

Two, by 1981, Alaska's projected severance tax will be $3 billion compared to approximately $75 million in Montana.

Three, Texas will receive $1.4 billion in 1981, twenty times greater than Montana's intake and, on top of that, the individual royalty owners in Texas get 12½ percent for the landowners' royalty.

Four, sales taxes in States are more of a drain than Montana's severance tax.

Five, in West Virginia, the gross product of miners is taxes at 3.5 percent which yields $1.04 per ton, bringing the cost of their coal tax to approximately 8.6 cents per billion Btu's.

This does not prove to me these arguments that I have just given that Montana's tax is exploitive.

The second fallacy is that Montana's tax is a burden on the consumer and this, I submit to you, Mr. Chairman, is an absolute flim-flam. Less than 50 cents per month or less than 2 cents per day is attributable to coal mining impact aid tax.

The third fallacy is that the cost of delivered coal has risen dramatically because of the impact tax.

This too cannot be proved. Seventy percent of the cost of coal is attributable to transportation; just the increases in freight in one year alone exceed the entire impact tax.

The fourth fallacy is that the development of an OPEC situation is developing within the United States. This, Mr. Chairman, is demagoguery of the worst kind.

The State of Montana does not receive a penny's worth of royalty on Federal coal. We may get a rebate but that rebate amounted to less than $1 million last year to the State.

No landowner in the State of Montana receives a royalty on Federal coal. The vast majority of coal owned in Montana and the West is owned by the Federal Government. The surface may be owned by the individual landowner, but the coal is owned by the Federal Government and without coal mining impact aid tax, the only thing left behind is the remainders of exploitation, abandoned hospitals, abandoned schools, the unemployed, the scars of mining and timber, tumbleweeds blowing up the street of deserted towns.

I think it is proper to begin by putting Montana's coal tax in perspective with other States and their natural resources tax.

The charge has been made that Montana's taxes are exploitive. However, you might be interested to learn that according to an article published in the September-October 1979 edition of the Texas Business Review by a researched economist in the Texas State Capital Controller's Office, as a regional group, the States of Texas, Louisiana, Arkansas, New Mexico, and Oklahoma collect over 73 percent of all natural resources tax in the United States of America.

There are other ways to look at natural resources tax, and I would like to take this opportunity to discuss them in more detail.

First, one can look simply at the tax revenues received. The Texas Comptroller of Public Accounts estimates that they will receive $1.4 billion in absolute dollars in 1981. Montana will receive $75 million. Texas will, in other words, receive 20 times as much tax revenue from natural resource taxation than Montana will.

Is Texas exploiting the United States of America?

Let's not forget that in Texas and other oil producing States, the royalty owners receive 12½ percent of the proceeds. This 12½ percent is over and above any wellhead tax or severance tax that goes to individuals, whereas the vast majority of coal in Montana is owned by the Federal Government, and nothing goes to the individuals or States.

The story is much the same for certain other States and clearly points out that Montana is not taxing its resources to the same extent these other States are. For example, in 1979 the State of Louisiana collected $459 million for its severance taxes, which amounted to nearly 29 percent of the total tax revenue.

Montana in 1979 received $42 million, which accounted for 11 percent, Mr. Gramm, of their tax revenues.

Finally, Alaska received $483 million in taxes and royalties. This amounted to 59 percent of their tax revenues. By 1981 it is projected by Alaska officials that their tax receipts will increase to $3 billion or 86 percent of this total tax revenue.

Thus, revenues from these taxes in Louisiana are 10 times the amount in Montana. Texas collects 20 times the amount that Montana, and Alaska will collect 40 times what Montana does.

These figures should speak for themselves, because Montana receives far less in taxes in absolute dollars and less as an overall percentage of tax revenues of their State than any other State does.

Another way of comparing State taxes is to break them down into cents per million Btu basis. The figures in table 1 also come from the Texas Comptroller's Office and the Mountain West Research group, and according to them it is the only fair way to compare taxes.

These figures show that Montana is in line with other States and is in fact lower than some of them.

Just to glance at this table I [see p. 38] will reveal that Texas has a tax on oil of 6.5 cents per million Btu while Montana coal has a severance tax of 7.3 to 9.6 cents per million Btu; Louisiana, 16.63 cents; Oklahoma, 12.58 cents; New Mexico, 10.76 cents per million Btu—every one of them higher than Montana coal tax.

A very significant thing to remember is that coal mining leaves a much higher impact than oil and gas. Oil flowing out of a well head doesn't create acid rains. Oil flowing out of a well head doesn't mean that thousands upon thousands of acres are turned upside down.

I guess a good question to ask at this point is have the big utility lobbyists flim-flammed you. Did they tell you the true cost borne by the consumer? Table 2 clearly shows that indeed very little of Montana's coal mining impact aid tax is borne by the consumer.

If you will look at the third line it will show you in Wisconsin $3.33 per year goes for that impact aid tax; St. Paul Power and Light, $2.69 per year; Minnesota Power and Light, $6.67 per year; Commonwealth Edison, $1.55 per year. Out of the average consumer bill goes that impact aid tax, to pay for turning Eastern Montana and Wyoming upside down.

These figures were based on 1977 utility form reports which were filed with what was then called the Federal Power Commission, now the Federal Energy Regulatory Commission.

Let's take a closer look at these figures by using Northern States Power as an example. They are one of the participants in the lawsuit filed against Montana.

The average yearly cost of electricity to the residential customer of this utility is $273. Of that sum, the delivered cost of Montana coal to the consumer is $24.02. The total production taxes, including both State and local taxes on that coal, amounted to $2.69, or less than 1 percent of the average yearly cost to the consumer of Northern States Power.

This is less than 50 cents a month, less than 2 cents a day. Minnesota's own sales tax is 4 percent, and this means $10.92, or almost a third more than the effect of Montana's coal severance tax.

I note that the mayor of Minneapolis is demagoging on this issue. Perhaps the Minnesota delegation could point out to his honor that Minnesota's sales tax on electricity is about twice the burden that the Montana severance impact aid tax is.

As you can see from table II, the figures for other States are also extremely low. In fact, as I have just stated, the sales tax affects consumers more. However, no one would think of limiting the state's right to levy a sales tax on their citizens.

Again, it should be readily apparent that the effect of the severance tax is at the most only a small portion of the overall cost to the consumer. Yet, the costs of converting to coal are, undeniably, rising.

I can sympathize with that. These costs, I believe, would be attributed to transportation and the Interstate Commerce Commission's continuous approvals of higher coal hauling rates.

In testimony before the President's Commission on Coal, then ICC Chairman Daniel O'Neal stated that 70 percent of the total cost of coal is attributable to transportation costs. Several illustrations of the impact of transportation costs will make this clear.

Table III depicts a comparison of transportation costs as a percentage of the consumer's cost of Montana coal. Along with that is a comparison of the tax burden of the production taxes as a percentage of the cost of Montana coal delivered to the consumer.

As you will plainly see, transportation costs, which range from 52 percent to 72 percent of the consumer's cost, are a much more significant component in the overall cost to the consumer than is the severance tax. These figures come in part from information supplied to the State of Montana by Burlington-Northern and Decker Coal Co.

These figures are not to be confused with those given earlier which presented the percentage of the production taxes to the average yearly utility bill for the same utilities.

The suit brought against the ICC by the city of San Antonio, Tex., highlights the impact of increased freight rates on the cost of coal today. When the Public Service Board there committed itself to coal in 1974, the freight rate was $7.90 per ton.

As of October of last year the freight rate stood at $18.18 per ton. During the Interstate and Foreign Commerce Subcommittee on Oversight and Investigation hearings in San Antonio in 1979, city officials told of a 3 percent increase in the mine mouth cost of coal but a whopping 49 percent increase in coal hauling rates.

One further example of the effects of transportation costs can be found in a 1977 article entitled "Taxing Coal" by Byron L. Dorgan, the North Dakota tax commissioner. He noted that in 1974 alone, the freight rates in the Midwest increased by a total of 17.6 percent.

Dorgan concluded by stating that the increases received by Burlington-Northern on its freight rate of coal in 1974 alone exceeded the entire tax charged by the State of Montana on the same coal.

Attached is a summary of where the proceeds of the severance tax go for the State of Montana. Starting in 1980, 50 percent of the proceeds go into a trust fund for the future.

Attacks on this designation, it seems to me, fail to understand that what we do today can have unforeseen consequences in the future.

For example, the effects of the underground water flows which are the lifeblood of Montana agriculture are not at all well understood. When the seams are perforated and the water trickles down to these underground aquifers, what happens to these aquifers and how does this affect our future water supplies?

These are questions to which there are no answers and reasons why we need to take precautions for the future. A case in point on these unforeseen consequences concerns a study now ongoing in Montana on the problems associated with past underground mining operations which have resulted in acid mine drainage from unsealed coal mine shafts. The flow has seriously affected about 25 miles of Sand Coulee Creek and its tributaries and threatens the water supply of nearby communities.

These areas also contain coal waste dumps and mine openings which contribute to water and air pollution. These problems represent possibly an extreme danger to residents of Sand Coulee, Tracy, Stockett, Centerville and Great Falls.

This money can be used for those unforeseen problems that might arise, especially those that might affect Montana's largest industry, agriculture, and its most precious resource, water.

You are all familiar with the Appalachias of America. Montanans are painfully aware of those who take our resources with little concern or regard for the economic, social and environmental problems they leave behind.

We in Montana need only look at the city of Butte, where 46 million tons of copper were mined between 1910 and 1975, leaving that town a scarred city; 100,000 people lived there in its heyday while today only 25,000 live in Butte.

Butte stands as a constant and painful reminder of the boom and bust syndrome we all hear so much about but which we pay too little attention to. Yes, Montanans are aware of the kind of manipulation that can come from big companies in control. We have read our history books.

It is a sad day when a group of utility companies called the National Coal Consumers Alliance would flim-flam such esteemed people as the mayor of a large Midwestern city and cause him to make statements that would set one group of citizens against another.

It should be made clear that this alliance is big business. It should be made clear that they are utility companies. It should be clear they failed in court and now seek you out to accomplish this special interest legislation.

They should be asked if and who put up $100,000 to lobby for the passage of this legislation. They should be asked how much they guarantee the average power bill will be reduced.

They should be asked if they are indeed contacting members and telling them that there is no problem with this legislation and that the subcommittee members look favorably on it. They should be asked why they used gross values of the taxes and revenues received and why their data is not broken down into figures, which can give an accurate comparison of Montana's tax rate to that of other States.

According to Ed Warren of the Texas Comptroller of Public Accounts Office, when Texas State officials were reviewing oil and gas taxes there, they concluded that the only fair way to make a comparison of the State and local taxes on oil and gas production in Texas with taxes in surrounding States was to reduce the tax to a cents per million Btu basis.

I maintain that the lobbyists in support of this legislation have not done so because they do not want you to see information which is contrary to their claims.

In closing, let me say that in Montana and Wyoming we have one of the largest coal deposits in the world; a cheaper and cleaner coal, a coal that could very well be the cornerstone of energy independence for this nation.

The people of Montana realize that. The people of Montana are also aware that impacts will come and overwhelming public sentiment in Montana rides on the side of receiving proper redress for those impacts. I would include editorials from two of our leading papers for the record. [See p. 40.]

You have heard of the sagebrush rebellion. Well, my friends, I promise you that the passage of this kind of legislation will make that rebellion look like a garden party.

The passage of this type of legislation will be viewed as a war on the west and a plundering of its resources with no reimbursement. It will serve to unite every faction of Montana, from farmer, laborer, state legislator to Governor in a force to oppose the development of coal.

You see in this room Senator Max Baucus, a Democrat—I happen to be a Republican—a representative of the Northern Plains Resource Council, a representative of the Governor, a former Lieutenant Governor, greatly respected as an energy expert within our State, Mr. Christiansen, Attorney General Mike Greely.

I would ask this subcommittee, would these very prominent persons be here to promote a practice that was excessive and unfair, and a position that was exploitive to the nation of the United States? No. They are here because they are united, they are united behind a cause of the State of Montana which they feel is just.

I feel it is far better for the buyer and the seller to retain the present agreement, an agreement that helps this nation and the consumer in the form of more energy at reasonble prices, and an agreement that helps the seller and the host States pay for the impacts of energy development for around a cost of 2 cents per day per consumer.

Help this Nation produce more energy and not less. Defeat this bill.

[Attachments to Mr. Marlenee's prepared statement follow:]

Table I

	Texas	Louisiana	Oklahoma	New Mexico	North Dakota	Wyoming	Montana
coal	-	-	-	-	6.5	4.7	7.3 to 7.6
oil	6.56	16.63	12.60	10.76	8.13	5.4	4.1
gas	6.10	6.93	5.95	6.61	2.1	3.2	2.1

Table II

	Utility Company				
	Wisc. P&L	Northern St. P&L	Minn. P&L	Comwlth Ed.	Central Ill. P&L
Average yearly cost of a consumers bill	$317	$273	$314	$273	$426
Of the average yearly cost to the consumer, the delivered cost of Montana coal	$38.67	$24.02	$57.46	$15.82	$32.00
Total production taxes including state and local	$3.33	$2.69	$6.67	$1.65	$2.10
Percent of production taxes to the average yearly cost to the consumer.	1%	1%	2%	½%	½%

Table III

	Transportation costs as a percentage of the consumer's cost of Montana coal	Production taxes as a percentage of the cost of Montana coal delivered to the consumer
Wisc. P&L	64%	8½%
N. St. P&L	53%	11%
Minn. P&L	52%	11.6%
Con Ed	59%	9.7%
Cent. Ill	72%	6.7%

COAL SEVERANCE TAX AND ITS COMPONENT PARTS

FUND	FY 79	FY 80	FY 81
Trust fund for future generations	$10.7 mill.	$23.6 mill.	$40.3 mill.
Alternative energy grants for research, and demonstration programs in solar, wind, biomass and other areas.	$800,000	$1.5 mill.	$2 mill.
Local impact account to mitigate social, environmental problems (Coal Board)	$5.4 mill	$9 mill.	$7.1 mill.
Educational Trust	$3.1 mill.	$8.9 mill.	$8 mill.
State Equalization aid-state school foundation	$3.2 mill.	$5.2 mill.	$4 mill.
County land planning	$300,000	$500,045	$400,000
Renewable Resources, water projects, dams and irrigation projects	$800,000	$1.3 mill.	$1 mill.
Parks and cultural projects	$800,000	$2.2 mill.	$2 mill
State Libraries (new in FY 80)	-	$400,000	$400,000
General funds	$12.8 mill.	$20.1 mill.	$15.3 mill.

GREAT FALLS TRIBUNE March 11, 1980

Gear up again for severance tax battle

Montana is under attack on multiple fronts now for its 30 percent coal severance tax. But that doesn't mean the state should give up the battle.

Opponents' arguments against the tax have changed little in the last two years; and Montana's answer doesn't need to change either.

The most recent attack comes from the House of Representatives, where two congressmen, one from Indiana and one from Ohio, have introduced bills to limit state coal severance taxes to 12.5 percent.

Their move follows one made last year by a senator and a representative from Texas. They, too, introduced legislation to lower state coal severance taxes. No committee action was taken on the Texas-inspired measures.

This year, the Texas congressmen decided to let representatives from other states lead the fight against high severance taxes to show that Texas is not the only state opposing Montana's tax.

But, midwestern states are no newcomers to the battle against the 30 percent coal severance tax. Beginning in 1978, mining companies and utilities that serve customers in eight states have challenged Montana's 30 percent tax in the courts. The companies have customers in Illinois, Iowa, Minnesota, Wisconsin, Michigan, North Dakota, South Dakota and Texas.

The challenge will be heard before the Montana Supreme Court next month, but the matter is expected to move all the way to the U.S. Supreme Court.

The companies insist the severance tax is unconstitutional because it imposes a burden on interstate commerce; and they charge the tax works counter to a national policy to encourage the use of coal.

In Congress, arguments are similar. In a letter sent to all House members, Ohio's Rep. Samuel Devine, R, said Montana's tax was "unfair, unnecessary, inflationary and contrary to the urgent national energy policy of developing America's coal at the lowest possible cost." He said Montana, which has the nation's highest severance tax, and Wyoming, with a 17 percent tax, "have become a new domestic OPEC."

Montana has been called the OPEC of the West before; it also has been plundered repeatedly for its natural resources. With coal, the state has insisted things are going to change. Montana is willing to supply its coal to the nation, but for a fair return. Impacts from coal development — social and environmental ones — will be paid for from the severance tax.

The answer to all the accusations about the 30 percent severance tax can be as calm and reasonable as the accusations are emotional. Montanans need to point out the tax is not discriminatory — it applies to all coal mined here, regardless of whether it is for consumption in Montana or elsewhere.

Then they must explain that the "policy of developing America's coal at the lowest possible cost," which Rep. Devine so patriotically calls upon in his letter, makes sense. But figured in with that lowest cost must be the social and economic costs the state suffers from feeding the energy appetite of the nation.

Finally, Montanans must insist that the severance tax simply is not an exorbitant cost upon consumers. Its impact is as little as one or two cents a day on consumers' utility bills. Transportation costs have more of an impact. Estimates are that transportation charges have accounted for two-thirds of the cost of Montana coal delivered to burn markets in the Great Lakes area.

All these points have been made before. They will have to be made here, in the courts and in Washington, D.C., again and again. The opponents of Montana's severance tax are persistent. We can afford to be no less so.

GF 3-11-80

BILLINGS GAZETTE

MAR 18 1980

BILLINGS GAZETTE March 18, 1980

Utilities harass Montana on coal severance taxes

Montana faces an uphill battle in its fight to retain the coal severance tax, but one it surely will win if the courts pay any attention to precedent in their final rulings.

The coal-burning public utilities are ganging up on Montana, Wyoming and North Dakota by threatening legislation in Congress to place an arbitrary limit on the coal severance tax. Their battle against Montana in the courts is a demonstration that they will stretch any legal point in their campaign of harassment. They are playing hardball in an attempt to coerce Montana into submission.

Why the coal severance tax? It is a matter of self-protection and thinking of the future. Montana has seen looting of its natural resources in the past as it served the purposes of exploiters and investors who capitalized on divide and conquer tactics with the enticement of a few quick dollars now for state residents. The legacy is something else.

Montana is dotted with denuded mountainsides that will need decades, even centuries to restore and mining scars that are not only unsightly but hazardous.

Oh, they'll do it different this time, they tell us. Yes, they will if Montanans who love this land have their way. The coal severance tax with its provisions for present impact and the future are part of the plan to make certain it doesn't happen again. Without the tax and other related laws the future is certain.

The people of this state, through their legislators, approved a coal severance tax because of widespread feelings that Montana should be left with something besides biological deserts and bankrupt communities when the exploiters move on.

We maintain Montana has a right to levy a severance tax on coal, the amount being that which its Legislature determines to be required.

There is nothing new about taxes on products. Whether the amount meets the pleasure of the buyer is not a matter for the courts or the Congress. We all pay taxes on beer, cigarettes, gasoline, booze and a host of other goods. Until the producers pushed the prices up and up, the percentage of the tax in some instances was as large as that placed on coal.

Montanans now pay taxes on natural resources which come from other states. As has been pointed out by State Sen. Tom Towe, some of the other states levy taxes equal to that of Montana when the British thermal units they contain are considered.

We feel confident that the courts will uphold Montana's right to impose a severance tax on coal with the amount left to the discretion of the lawmakers of this state.

MARCH 18, 1980 BILLINGS GAZETTE

Mr. **Sharp**. Thank you, Mr. Marlenee.

We will be having at least one more day of hearings.

Mr. **Marlenee**. I appreciate that, Mr. Chairman, because I know there are many Montanans that would like to secure time for those hearings.

Mr. **Sharp**. I thank the gentlemen for coming. We respect their vigorous advocacy on behalf of the State of Montana and the State of Wyoming. Certainly those of us who endorse this legislation come out of different perspectives.

I think many of us can appreciate the wisdom of the State of Montana to looking forward to what will happen in the development of their resources, the effort to protect the environment, the land, and the infrastructure that would be necessary to carry out that development and clean up what is left over. I know you have had a difficult history with copper.

I guess the concern that some of us have is that we must plan ahead as well, and that we, as we plan ahead, are going to be relying more and more on that coal. We see that coal is going to be very expensive, shifting wealth into the States of Wyoming and Montana as we purchase that coal, and we see in addition we will have paid a tax which is very easily raised within those States, if we understand the politics out there.

We already hear the State of Wyoming is very envious of the ability of the State legislature of Montana to impose this tax, very desirous of getting it higher. We find in looking ahead we have to be concerned about what costs we are going to pay, not only for transportation, not only for the coal—and this subcommittee is looking into the question of transportation costs because it is a very significant one—but what are we going to have to pay in terms of taxes.

While we can appreciate there are developmental costs that come to Montana and Wyoming—we also assume that those developments bring great wealth—they bring people with income, they bring jobs, they bring economic activity which I can understand some people in Montana and Wyoming may not like that change of life.

But certainly in terms of economics, it will bring an extraordinary amount of wealth into that part of the country.

We also find it difficult to get an assessment of how to compare what we pay to Texas, to Indiana, to Montana. I am sure this subcommittee will want to look into how we get an equitable comparison of what we pay.

I cannot say I am very happy about what the States of Louisiana and Texas do myself. The gentleman from Texas has quite a different perspective on that. But I wonder if Btu equivalency is an accurate way to measure this.

First of all, I suggest to you that all you have got to do is go into the marketplace and ask any user of energy, anybody who understands the use of energy, which fuel he or she prefers, and it will probably come out: first, natural gas; second, oil; and well down the list, coal.

Why? Because there are a whole variety of other obstacles, as you have indicated, to the utilization of coal—transportation problems, environmental problems. Therefore, there is a greater burden to begin with on getting us to convert to coal.

Second, there is a problem in Btu equivalency, that if we begin to measure it on end use, what finally gets to the burner tip, to the boiler, that is going to use coal or natural gas or oil, we will discover that the Btu content of that fuel by the time it gets to the burner tip will have substantially reduced for coal and much less so for natural gas and for oil.

The point is if we compared these taxes at the burner tip instead of at the field, the oil field or the mine head, we might discover that the figures are substantially different.

I think we will be wanting to look at that mathematics. I think we want to look and see where we are in 10 years and 20 years in terms of our payment of taxes to the States of Montana and Wyoming.

If I could just raise another issue—and I will give you time to respond—some of us find it a little difficult to understand the concept of why we should be shareholders in our State in the lands in Montana and, as I understand it, help by taxes foot the bill of that shareholding, and also find that the State of Montana is able to tax us at a very high rate for the product that comes off of that land.

I would suggest to you that a recent article in U.S. News and World Report on March 17 lists differences among States in per capita aid from the Federal Government to State and local govenments.

Third on that list is the State of Montana, after the District of Columbia and Alaska. Fourth on that list is Wyoming. At the bottom of that list is the State of Indiana.

You will also find that the State of Texas, which I don't normally seek to represent, comes in second to the bottom on that list. You will find the States of Minnesota and Louisiana come at the half or below half level.

So, one of our concerns is what measures shall we use to determine who is gouging whom and who is footing the bill.

Maybe my concern is that many of the other States do so much better than we do on all of these counts that we are looking for a variety of ways.

But I would stress what we are examining here is a concern with the proposition that one State has begun at a very high rate, that State is already considering raising that rate. A second State is following in very rapid succession.

What we hear is delay that because of the concern the Federal Government might interfere with that effort. We find it a little difficult to accept all of the arguments. Some of us do. I would be happy to yield to the gentleman to respond.

Senator BAUCUS. Thank you very much, Mr. Chairman.

This is an interesting exchange. As the chairman knows, we are good friends. We both came to the Congress in the same year, the same class, and joined in a common cause on virtually every single issue that came before this Congress. I guess it is only a matter of time before we would diverge.

You are right, Mr. Chairman. Coal is different from natural gas and oil. All comparisons have deficiencies. Btu comparison has certain deficiencies, and I think you pointed some of those out.

But coal is different. If one were to sink an oil well in this room, for example, the environmental impact would not be very great. Certainly not very great compared with a strip mine.

In Montana, we are not talking about underground mining. We are talking about strip mining. It is continuous. So, we in Montana bear infinitely greater costs for reclamation.

Mr. **Sharp**. Isn't the miner, first of all, responsible for preparing that land and, secondly, aren't fees already charged on that coal to guarantee that?

Senator **Baucus**. The operator, under both the State reclamation statutes and the Federal reclamation statutes, does have an obligation.

Mr. **Sharp**. Which means we pay when we buy the coal. We help pay for the reclamation of the land right there on the spot.

Senator **Baucus**. There is more to it than that, Mr. Chairman. We also have cities, towns, adjacent communities. You are right. Congressman Graham pointed out a couple of counties in question here don't themselves levy high taxes.

Forsyth, which is the county seat of Rosebud County, does have a very high property tax. It is the people that pay the taxes; it is not the sagebrush and the prairie dogs that pay the taxes.

There is the reason why there is a much greater tax rate in the city of Forsyth in Rosebud County and not a county tax itself. Not many people live in the county except in the town of Forsyth.

But there are a lot of other costs in addition to putting the earth back on top of the coal. The aquifers again. We just don't know. I don't know to what degree we are going to disturb that underground water.

Water is so precious in the west. It is not like Indiana. Indiana is humid. It is dry as a bone in Montana. We need every drop of water we can get. That is a very big cost we have to bear. So, there is a big difference between coal and natural gas and oil.

Second, going to the heart of the matter, you are absolutely right, that no State, including Montana, should abuse its taxing power. No doubt about it. The fundamental question here really is: Has Montana abused its taxing power?

Well, I submit that we have not. Who can tell what will happen in the future. If the price of coal doubles, triples, quadruples, and we still have an effective 22 percent coal severance tax, I might agree with you that we in Montana have abused our taxing power.

But we have not. The effective rate, as we all agree here, is less than 1 percent to a consumer's utility bill. It is not that great. It pays for the cost that we incur.

The Wyoming legislature voted against increasing its severance tax—again. I submit that if this bill does not pass, as it should not pass, Montana will continually look at the total cost of coal production so that we don't abuse our position.

I think it is proper to have hearings here, to raise the issue and the consciousness of everybody involved. But let's not pass this bill because of all the other problems it is going to cause.

We are going to be furious in Montana if this bill passes because we need the revenue to offset the costs. I can tell you that I will as forcefully as I possibly can tell the Montana legislature that to abuse the tax would mean to lose it. Congress would pass a bill that would pull the rug out from under us.

We understand that. We are human beings, too. But I suggest that is the approach we take.

Finally, I regret that Indiana is at the bottom of the list in receiving Federal money. Perhaps if you were on top we wouldn't be having this hearing today.

I also regret that Texas is apparently second from the bottom. Another reason for the hearing perhaps. But I suggest that a better way to remedy that problem is just to get in there and pitch a little more in the appropriations hearings.

Mr. SHARP. The gentleman is on the Appropriations Committee. Maybe he can help resolve that problem.

Senator BAUCUS. That is a better way to get on with this problem. Let's not get worked up on this bill. I think the bill raises a good point, but it should not be passed because we in Montana don't abuse it.

Thank you very much, Mr. Chairman.

Mr. SHARP. Thank you.

I think the gentleman from Texas wants to briefly respond. We don't have to have an extended debate.

Mr. GRAMM. Mr. Chairman, having gotten all the venom out of my heart in my first statement, I think now I would just like to say I am struck by the testimony of our colleague, Mr. Marlenee from Montana.

It reminds me of something you might hear if you went over to DOE and they brought in this fellow who ran a gas station in Italy, Tex. And he had been price gouging, charging everybody twice over the Federal limit.

He would say,

> Well, hell, do you realize that with 100 million automobiles in the United States the overcharge I have charged is insignificant. You guys are looking at the wrong problem. You ought to be looking at OPEC. You ought to be talking to those guys from Detroit. They ought to be making better cars. You actually ought to have Exxon Oil Co. in here. Look how much money they are making. Look how much I am making.

The point is that your State is in the infancy of its energy production. My State is in the twilight of its energy production. Unless we are going to stop this beggar-thy-neighbor policy, we are going to destroy the economic roots of the Union.

I think it is relevant that when OPEC hit us with an embargo, what did Texas do in terms of severance tax? Nothing. What did Montana do? It quadrupled its severance tax.

Now, we have heard a lot of talk about Btu equivalent. I happen to be an economist. Economists have done a lot of work in this area. Basically Btu equivalent comparisons are virtually meaningless because a Btu of natural gas is a completely different element than a Btu of coal—differences in transportation costs, differences in the cost of use, differences in the cost of cleanup and environmental impact.

If we had a perfect market, if every resource were deregulated, the free market price would dictate these differences in cost. In fact, we don't have a free market in oil.

We don't have a free market in natural gas. But we do in coal. The paradox is, while you fellows have done a good job representing your State, your economic argument is nonsense. In fact, with a free market in coal, the price is an indication of the effective Btu equivalent value.

If we had a totally free market in oil and gas, then a percentage tax on dollars would be the ultimate apple-to-apple comparison.

Finally, Mr. Chairman, for the sake of time, I would simply like to make two points.

One—and I am not trying to be personal—I resent everybody impugning the motives of American business. There is no reason to believe that a public utility company is any less a good citizen than any individual.

These public utility companies, as I have made a point from the very beginning, have passthrough clauses. They are not paying these costs. In fact, there is a good deal of evidence that on their passthrough and their markup for sales they are actually profiting from your tax.

Why they are here is basically because they are day after day being assaulted by local citizens paying these utility bills.

In terms of Montana and its great cost, I don't think the facts bear out the assertions being made. If you look at the record, the Montana legislature last year substantially reduced property taxes and income taxes in the State. Yet, they are bearing all the costs of resource recovery.

How come they are not raising taxes to pay for it; how come they are lowering taxes.

Senator Baucus. Proposition 18.

Mr. Gramm. Well, it may be. The problem is they have not reduced services, and that suggests that the revenues are coming from somewhere else.

So, as the author of your increase in severance tax said in 1976, "In the energy crush today, Montana should remember that the Arabs have oil but Montana has the coal."

There is a difference. The Arabs are not part of the Union, one and inseparable. Montana is. That is something that under the Constitution clause we can do something about.

Mr. Sharp. Gentlemen, I suspect this debate will go on, and especially if we keep Members of Congress talking to each other.

Mr. Marlenee. I would like the opportunity to respond.

Mr. Sharp. I will be happy to let you. I am trying to keep this short because we want to get the attorney general of Montana on, and we have two other witnesses to help define what the legal issue is in terms of Federal intervention on this tax.

Mr. Marlenee. Mr. Chairman, I think there are a couple of things that need to be cleared up, one specifically about the statement the gentleman from Texas made.

The facts that we used within our statement are taken from the comptroller's office in the State of Texas. I assume that he has some confidence in the elected officials of that State.

Mr. Gramm. Was that a question?

Mr. MARLENEE. Second, we figured the Btu cost of the severance tax, or the wellhead tax, and compared them, Montana to Texas. Texas, 6.5-to-6 cents per million Btu; Montana, 7.3-to-9.6 cents per million Btu.

Now, that is just a wellhead tax and severance tax comparison. Again, I go back to the point, sir, that in Texas or where you have oil fields and oil royalties, the landowner retains 12.5 percent of all production.

That money flows back into the economy and helps to pay for hospitals and schools and the well-being, and it is turned over and over in the economy of the local area, that 12.5 percent landowner royalty that we are talking about. That is over and above your wellhead tax.

But on coal that has more impact, the vast majority is held—again I emphasize—by the Federal Government. It is not, as the chairman said, on Federal land. You are talking about shareholding in Montana.

Yes, we do have a lot of Federal land in Montana. But we have a lot of private land, practically all of the private land the Federal Government under the Homestead Act withheld the coal rights under in the West.

So, therefore, as I said, if you take the coal and you mine it, and you do not leave the severance tax or coal mining impact aid tax, then you have left the State with nothing but the results of the impact of mining.

I rest my case, Mr. Chairman.

Mr. SHARP. I thank the gentleman. We appreciate it.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. SHARP. The next three witnesses will relate to the legal issue. We have with us the Honorable Mike Greely.

Senator BAUCUS. Mr. Chairman, I would like to introduce the attorney general.

Mr. Chairman, the next witness is Mr. Mike Greely, attorney general for the State of Montana. I have known Mike for many years. I can tell you that Attorney General Greely and the next witness, Bill Christiansen, former Lieutenant Governor of the State of Montana, are two of the finest people you are ever going to meet.

They are very, very conscientious, public-spirited citizens in the State of Montana. They work very hard. They are absolutely great people. It is a proud moment for me, Mr. Chairman, to have the honor to introduce Mr. Greely.

Mr. SHARP. I think our intention was to bring them on as a panel.

Senator BAUCUS. Mr. Chairman, Attorney General Greely will proceed first.

Mr. SHARP. All right.

Gentlemen, we will be happy to put any information you have with you in the record, to make sure everything becomes a part of the official record.

We would be happy to hear what you have to say. To the extent you can summarize, we would appreciate that.

STATEMENT OF MIKE GREELY

Mr. **Greely**. Mr. Chairman, I want to thank you and this subcommittee for the opportunity to testify on a matter of grave importance to the people of Montana and all other States.

In the interest of time, I don't intend to read my statement, but only to point out a couple of legal issues that I believe this subcommittee should concern itself with when it looks at this legislation.

My good friend and colleague, Mark White, and I are currently engaged in litigation of an issue very similar to this, as the subcommittee probably well knows. I guess in spite of the vast spaces in Montana, our human resources are not quite so vast.

I feel a little bit like a goldfish in a swimming pool full of barracudas. I have a legal staff of two persons that are currently not only helping to testify before this subcommittee but also engaged in a legal battle with 11 utilities, 4 mining companies, a huge New York law firm, and now in addition to that the State of Texas—the good attorney from the State of Texas, Mark White.

Fortunately, I think we will have an opportunity—Mark White is actually coming to appear before the Supreme Court of Montana in this case. I will have an opportunity to take some additional time to show the attorney general from Texas some of the areas in Montana currently being strip mined and what that effect can be.

But let me turn to the legal issues that are involved here, as far as the historical precedent that this subcommittee would be setting by passing this legislation.

The single most essential facet of a State's sovereignty is the power to tax. Traditionally, the Congress has recognized the significance of the States' taxation powers and has declined to impose restraints on these elemental features of State sovereignty.

Those of you who are attorneys and students of constitutional law will recall the case of *Marbury* v. *Madison,* which was the first challenge between the State and Federal Government on the basis of taxation.

That leads me, Mr. Chairman, to talking about the two categories of Federal limitations on State taxation, to try and put this legisaltion in the proper perspective.

The first category consists of congressional actions taken to protect traditional areas of Federal regulation and control from undue interference from the States. These are the familiar limitations and restrictions on the taxing of national banks, limitation of discriminatory taxes on Federal savings and loan institutions, and limitation on head taxes on individuals engaged in air commerce.

I must emphasize, Mr. Chairman, that these are traditional areas of Federal control and authority that the States do not possess.

The second category of Federal limitations on States taxation authority consists of congressional actions akin to prevent discrimination and insure fair apportionment. States taxes on railroad property, for example, must be fairly apportioned to the presence and use of that property within the State which imposes the taxes.

Taxes on the generation of electricity may not be imposed in favor of electricity generated for in-State consumption over that generated for out-of-State consumption.

I might point out while it hasn't been brought out before, the taxes on the coal, the 22 current percent effective rate, applies both to coal consumed in State and out of State.

We do have two coal-fired generation plants in operation in Montana and several more proposed on the horizon.

A State may impose a tax on the transfer of stick only when significant portions of that transaction occur within the State's borders.

In closing, Mr. Chairman, I would like to suggest that Montana's coal severance tax really represents a farsighted effective means of dealing with the realities of coal production.

Montanans willingly accept the responsibility to supply coal from their vast resources to meet natural energy demands. We brace for this responsibility by enacting State surface mining and reclamation laws.

I am very proud of that, for what little part I had in it as a legislator, because these laws in the State of Montana are in effect very similar to the national strip mining laws. In fact, I think some of the information on which Congress passed that legislation, some of the information came from the foundation of Montana's strip mining act.

We sought no Federal handouts. Severance tax limitation threatens Montana's ability to meet its responsibility and to shape its own destiny. I think this has to be made clear. Montana is interested in providing energy resources to the Nation, but at the same time we don't want to do it at the sacrifice of our own lands and our own people.

Severance tax limitation is yet one more step toward total relinquishment of all meaningful State prerogatives and authority.

There is no question in my mind, Mr. Chairman, that the opponents of Montana coal severance tax have either inadvertently or knowingly misled the utility consumers concerning the impact of the tax on utility bills.

As mentioned before, a far greater impact are the freight rates and the sales taxes levied by the other States by the railroad companies.

Far more ominous to consumers is the prospective of costly and wasteful Federal handling of Federal coal development problems and more ominous yet is the prospection of the destruction of the cherished principle of States rights.

I think this is the issue that concerns me as a member of the National Attorney General's Association. I intend to bring this issue to their attention. I think the States rights issue is a very important aspect of this legislation. I think it should be seriously considered in the deliberation process.

Consumers should be supporting the States of Montana and Wyoming for the protection of State severance taxes because these taxes enable us to produce coal that is the best of all possible bargains on today's energy market.

Thank you very much, Mr. Chairman.

[Mr. Greely's prepared statement follows:]

TESTIMONY BY ATTORNEY GENERAL MIKE GREELY, STATE OF MONTANA ON H.R. 6625, A BILL TO REDUCE STATE COAL SEVERANCE TAXES.

Mr. Chairman, I want to thank you and this subcommittee for the opportunity to testify on a matter of grave importance to the people of Montana and all other states.

The very fact that federal limitation of state severance taxes commands the attention of Congress today bears witness to another fact--one that this subcommittee must come to grips with: federal preemption of states' rights is a poignant and relevant issue today just as it was nearly two centuries ago and as it has been many times since. The energy crisis, however, has added a new dimension to this issue, one that has generated new assaults on state sovereignty embodied in a variety of proposals to circumvent, restrict or terminate state authority over virtually every aspect of energy production. This subcommittee, Mr. Chairman, has a critical role in the resolution of this very real, very pressing issue.

I want to begin with a fundamental statement which I feel certain this subcommittee will endorse.

The single most essential facet of a state's sovereignty is the power to tax. Traditionally, the Congress has recognized the significance of the states' taxation powers and has declined to impose restraints on these elemental features of state sovereignty. On those few occasions when Congress did move to impose restraints, it did so only on the basis of sound constitutional considerations.

As you know, Mr. Chairman, H.R. 6625 would impose a federal limitation on a general excise tax enacted by a state government, an action that is totally without precedent. Congress, in its wisdom, has never tampered with the power of a state to enact a general excise tax.

There are instances in which the Congress has imposed certain restraints on state taxes. Those restraints, however, have not been imposed upon general excise taxes. Limitations traditionally concern the state's ability to tax federal instrumentalities. Congress has taken appropriate steps to ensure that the states' power to tax does not interfere with specific federal treaty limitations, with federal governments or with Indian tribes.

To elaborate, Mr. Chairman, let me specify the two categories of federal limitations on the states' authority to tax.

The first category consists of Congressional actions taken to protect traditional areas of federal regulation and control from undue interference from the states. These are the familiar limitations and restrictions on the taxing of national banks (15 U.S.C. § 381 through 382); the limitation of discriminatory taxes on federal savings and loan institutions (13 U.S.C. § 1464(h); and limitation on head taxes on individuals engaged in air commerce (49 U.S.C. § 1513). I must emphasize, Mr. Chairman, that these are traditional areas of federal control and authority that the states do not ~~prosse~~ss.

The second category of federal limitations on states' taxation authority consists of Congressional actions taken to prevent discrimination and insure fair apportionment. State taxes on railroad property, for example, must be fairly apportioned to the presence and use of that property within the state which imposes the taxes (49 U.S.C. § 11503). Taxes on the generation of electricity may not be imposed in favor of electricity generated for in-state consumption over that generated for out-of-state consumption (15 U.S.C. § 391). A state may impose a tax on the transfer of stock only when significant portions of that transaction occur within the state's borders (15 U.S.C. § 78bb(d)).

These, Mr. Chairman, are the two categories of legitimate and appropriate federal limitation of the states' power to tax. Notwithstanding these legitimate and appropriate limitations, Congress has never acted to limit or restrict the states' power to tax articles and commodities that clearly fall within the states' authority as traditionally defined.

Federal legislation limiting a state general excise tax would be an unprecedented interference with states' rights. Such action by Congress would open the floodgates of federal control over state taxation in all areas.

Mr. Chariman, H.R. 6625, is, moreover, a discriminatory bill. It specificies several states in the West, notably Montana and Wyoming, perhaps North Dakota, for special Congressional attention. As we have heard, the revenues received by Montana from its severance tax are merely 1/20th of the revenues received by the state of Texas from its severance tax. Yet we have seen no proposal to limit the revenues received by the state of Texas from its excise tax on oil. I would also point out, Mr. Chairman, that when coal and oil are converted to electricity and measured in BTU's, the Texas tax per BTU is vitually identical to the one imposed by Montana.

I submit that H.R. 6625 is extremely unfair, that it discriminates against the coal producing states. I further submit that it constitutes an unprecedented interference with state sovereignty.

In closing, Mr. Chairman, I would suggest that Montana's coal severance tax represents a far-sighted and effective means of dealing with the realities of coal production. Montanans willingly accept the responsibility to supply coal from their vast resources to meet national energy demands. We braced for this responsibility by enacting state surface mining and reclamation laws, a severance tax and water legislation. We sought no federal hand outs. Severance tax limitation threatens Montana's ability to meet its responsibilities and to shape its own destiny, substituting federal regulation and rule. Severance tax limitation is yet one more step toward total relinquishment of all meaningful state prerogatives and authority.

There is no question in my mind, Mr. Chairman, that the opponents of Montana's coal severance tax have--either inadvertantly or knowingly--misled utility consumers concerning the impact of the tax on utility bills. Far more impactive are freight rates and sales taxes levied by other states. Far more ominous to consumers is the prospect of costly and wasteful federal handling of Western coal development problems in place of the states of Montana and Wyoming. More ominous yet is the prospect of federal cooperation with a few selfish interests toward the destruction of a cherished principle of states' rights. Consumers should support the states of Montana and Wyoming in the protection of state severance taxes, for these taxes enable us to produce coal that is the best of all possible bargains on today's energy market. Thank you, Mr. Chairman.

Senator **Baucus**. Mr. Chairman, our next witness is Mr. Bill Christiansen, the former Lieutenant Governor of the State of Montana. Bill has been very deeply involved in resource development issues in our State for many years. I think when you listen to him you will be taken with how much he knows about the subject.

It is a privilege to introduce him to the subcommittee.

Mr. **Gramm** [presiding]. Thank you.

I would like to remind our witness that we will put your full statement in the record. [See p. 60.] At this point I order the full statements be printed totally in the record. I would ask you to summarize your statement so that we can spend our time in discussing the issue.

Thank you.

STATEMENT OF WILLIAM CHRISTIANSEN

Mr. **Christiansen**. Thank you, Mr. Chairman, members of the subcommittee.

As Senator Baucus said, my name is Bill Christiansen. I am from Helena, Mont. I was 8 years in the Montana Legislature and served a term as Lieutenant Governor. Subsequent to that, I was in charge of the Governor's energy office.

At the present time I am adviser—they tell me senior; I don't like that part of it—to the attorney general's office in energy matters.

In spite of your disenchantment, Mr. Chairman, with the Btu values, I am going to ask the indulgence of this subcommittee for just a few moments to go through very quickly, which I know is pleasing to you, some charts that I have prepared for you.

Could I ask, Mr. Chairman, if the subcommittee members have at hand some charts that are numbered exhibit I through exhibit XII. [See p. 70.] Senator Baucus' staff will be happy to supply them.

Again, Mr. Chairman, we have enough copies so those who are in the audience who intend to follow this and cannot be followed by narrative, could have copies, if you would so choose to have them distributed. Would that be appropriate, sir? The staff has copies.

Mr. **Gramm**. If we may, let's have them distributed. I would like you to proceed while they are in the process of being distributed.

Mr. **Christiansen**. Certainly, sir. I hope in spite of, again, your disenchantment with the Btu values, to make some kind of a convincing factual argument that yes, coal is the bargain of the fossil market, and yes, western coal, including Montana coal and Wyoming coal, transportation and taxes notwithstanding, they are the bargain within the U.S. coal market.

Now, again, the common caloric term Btu's is acceptable, I am sure, because the Federal Power Commission reports, particularly 432, which we all look at as the somewhat bible of the industry, uses that term.

Certainly the term "Btu" is very important to all the contracts that are made in the coal companies. It is certainly one of the key elements as long as purchases will be made because they are buying energy and not tons of coal.

Other factors are very important, including the low sulfur content of both Wyoming and Montana coal.

I would say to Congressman Sharp, who was in the chair before, that he is right, that when you talk about product convenience, it is certainly easier to turn a spigot of oil or a spigot of gas as opposed to hauling a ton of coal into your backyard.

So, I am not going to belabor that. But I think the consequential costs of that production have a bearing on the rate of taxation which is permissible and justified in the instance of those situations.

Now, very quickly, as you have suggested we get through with this, if you look to exhibit I, this simply says that in the marketplace, among the three fossil fuels—and I think this will be surprising to some of those people in attendance—that the most efficient of the three fossils in terms of energy into a process and energy on the busbar of that process, that coal is the best.

In other words, it takes only 10,250 Btu units of coal to produce a kilowatt hour on the busbar. It takes 10,800 of gas, and it takes 11,250 of oil. So, Mr. Chairman, I believe we are talking apples and applies in the sense of the caloric values from the energy in of a process to the energy out of a process.

Certainly in this day of conservation of energy, that is a very important consideration. So, I want you to know that coal does not take a back seat in its conversion efficiency.

Now, if I may ask that you turn to exhibit II, which is the national picture of the coal market in the United States, I would call your attention to column 2, the bottom numbers. These are again a common term that is used throughout the energy industry, cents per million Btu.

If you will notice, Montana and Pacific coal, which is grouped, their price is 52.8 per million Btu. If you follow that column up, you will see in the major projection areas of our country that Btu values are double in price and that, you must acknowledge, includes for western coal the fact that the tax is in there.

Now the transportation is not because these are at burn sites within those geographic regions.

Let me support that further, if I may, by having you turn to the next chart, which is a jumble of numbers. But we must have saved a lot in printing when we crowded up our data to this extent, and I commend you for that.

Let me say, if you look at the bottom part of that chart, the last grouping, you will find that that is the breakdown of the former chart indicating western and Pacific coal.

If you follow on through from Montana into the third from the last column, you will find that Montana coal is 32.4 cents at the burn site, including the tax, and that Wyoming coal is 37.8 cents per million Btu.

Now, I searched the entire record of this book, which again I term the bible of the utilities—this is the cost and quality of fuels for electric utility plants—and I found no place in this entire book, including North Dakota lignite, where the coal was cheaper than Montana and Wyoming coal, tax included at the burn site.

To me, that is an important economic consideration. It says to me that within the national market of coal, the western coal is a bargain.

Again, I would give you the progression on the next chart, numbered exhibit IV, of the prices that have occurred. These are all taken at the burn site and all compiled out of form 432, which is an obligation of the utility to present on a monthly basis and which is compiled on an annual basis.

I had to cobble in the end of that chart because the Federal data was not complete for 1979. But it is accurate. I vouch for it.

All this really says is that in 1979, in the national market at the burn site, that coal was $1.22 a million Btu. That is the last column next to the percentage of change. That oil in those same markets, at the burn site, was 2½ times as much, $3.03 a million Btu, and that natural gas was $1.75.

I really am trying to reinforce the fact that coal, yes, is a bargain in the marketplace, transportation notwithstanding, taxes notwithstanding.

The next chart is a search that was done by a consulting firm whose task it was to find the cheapest coal that could be found to amortize a plant.

Obviously these plants are now engineered to burn a special coal, you like to make a contract so that you get the full efficiency from that coal, and you like to amortize that plant on a given coal with given chemical characteristics.

The data is a little stale. We don't like stale data. But I think it is pertinent because it was after Montana's tax. If you look at the punchlines of this chart, this consultant determined that eastern coal at the burn site for this utility was $41.32; that western coal, including the tax, which you will note was supplied by the president of Detroit Edison, who I think at that time was aware of that tax, that that tax is included in the breakdown of the numbers that come from it.

Do you have the chart, sir?

Mr. GRAMM. Yes, I have it.

Mr. CHRISTIANSEN. Thank you very much. I am trying to hurry through this, but I want to get a few punchlines in here, if I may.

That simply says that our coal, Montana coal, including the tax, including the transportation by rail, including the transportation by water, was a bargain in the marketplace in 1975. It still is a bargain in the marketplace.

Again, this news clip is from the purchaser of coal. I imagine there are several who work in that department. This man negotiated the contract for Detroit Edison's coal, and this gentleman—I should have underlined for your purpose, sir, but I will quote two quick excerpts from this:

"Edison estimates western coal prices will be about 40 percent lower than comparable Appalachian fuel." Further down in the article—I know you know that this is after the tax, and it does obviously include the transportation.

Further down in the article the purchaser of this coal says he estimates the saving over eastern coal could be $1 billion for the 200 million tons to be delivered from Decker Coal, which is in Montana, in the next 26 years.

That is a $5 saving per ton of coal because of the competitive market that they avoided and bought western Montana coal. I think that is very expressive.

Again, I won't belabor exhibit VII because that was discussed in the sense of the taxes that occur and the delivery of the electricity to the residential and other users. But I want to spend just a minute, if you will turn, please, to Exhibit VIII.

I think this says in a nutshell what occurs in a utility. Let's take Commonwealth Edison. I won't go through the rest of the chart, but if you look at the blend of the Btu's delivered to the Commonwealth Edison system collectively, you will find that they use 73.6 Btu's of coal, 22.7 of oil, and 3.7 of gas—of the total burn mix that comes into their system.

Just follow me below that and you will see the prices of those quantities. Where 73.6 percent of the coal is purchased, it represents only 56.2 of the price. Oil, where 22.7 is purchased, 37 percent of the price. Natural gas, 37.

In other words, it just distorts the formula. Coal is a bargain in the marketplace; oil and natural gas are not. Those analogies have been followed through on down through the major receivers of Montana coal. These four companies represented here receive over 90 percent of our coal.

Again, the next chart, sir, is the one that has been displayed on Representative Marlenee's chart. I make only a quick observation, if I may.

This is the Btu value comparison which you have seen before, I am sure, done by your comptroller, in which he does for fiscal year 1977 in Texas, and gets the severance tax and so forth, and the impact of 1 million Btu's of Texas tax.

I know as an economist you digest this much better than I do. But let me make the quick point that at this point in time, because I did want to work on the same fiscal year basis that the gentleman from Texas was working, our coal was 7.11 cents a million Btu's. The aggregate tax on Texas was 9, and Louisiana 11, and so forth.

You can read the charts certainly. I won't have to take the time of this subcommittee.

But Senator Baucus said that there could be in this room an oil well. That is true. There could have been. You had a rig outside here the other day, and you didn't bring it in and spud it in.

Mr. **Gramm**. There were those that wanted them to drill outside.

Mr. **Christiansen**. Had they doodlebugged it first?

My point is this. After the well is drilled, and after it is on line, on pump, and the same with gas, the environmental game is over, I think, and the consequences are over. Even the exploratory procedures are very inconsequential. You use thumpers now. You don't have to shoot to find wells.

I think the oil industry is to be commended, I would say, for the new equipment, if that is the term, in which they don't have to do a lot of shooting in the holes and so forth. They have come a long ways, so that the damage done during the exploration process is less.

One more thing. We talk about area. All our coal is stripmined. But let me make you one analogy, if I may, because the underground aquifer is the coal. When you make a 4,000-foot cut in that, you have done something that may be pretty devastating, the consequences of which may not be felt for generations. If I may expand on that for just a minute, Mr. Chairman.

That is a source in that part of our country of all domestic and stock water. That is it. When that is interrupted, we have got problems.

We have evidence that the drawdown of the wells down dip from the mining area are 40-foot drawdowns, that the coal companies had to go down to different aquifers and recover.

But what you are doing when you take a 4,000-foot cut in that mine, and put back the soil, even if you retain the topsoil you are creating a 4,000-foot underground dam. That material that you put back there has not the same porosity and permeability of what you took away.

So, we don't know what is going to happen to that underground dam. Is the aquifer going to penetrate it, will it eventually go around. That is a serious consequence.

[Testimony resumes on p. 83.]

[Mr. Christiansen's prepared statement and attachments follow:]

STATEMENT OF WILLIAM CHRISTIANSEN, ENERGY ADVISER
DEPARTMENT OF JUSTICE, STATE OF MONTANA

Mr. Chairman, Members of the Committee:

I am Bill Christiansen from Helena, Montana. I served eight years in the Montana Legislature and was Democratic floor leader in 1971. I then served four years as Montana's Lieutenant Governor. This was followed by one and a half years as director of the Governor's energy office. I am at present energy advisor to the Department of Justice, State of Montana, in the instance of the coal tax suit now pending.

I appear here as an opponent to HR 6625. In the time you have allotted me I would like to discuss Montana's coal and the other fossil fuels using the common denominator British Thermal Units, BTU's. I think you will agree that most, if not all, of the Federal Government's compilations of statistical material identify thermal values in these terms. This is particularly true of FPC and FERC reports dealing with utilities. The utility reporting form 423 is a specific example and I will be referring to that report from time to time.

BTU values are also most important in contract terms for coal utilities. I have distributed charts, all of which have exhibit numbers. As I briefly discuss them I would welcome your comments and questions at the time they are before you.

EXHIBIT I

If we are to treat the three fossils Oil, Natural Gas and Coal on common caloric terms, it might be well to consider the energy conversion efficiency of each. Energy in vs energy out of any conversion process is an important consideration. This chart shows it takes only 10,250 BTU's of coal to produce a kilowatt hour of electricity but it takes 10,800 BTU's of natural gas and 11250 BTU's of oil. Coal then is the most efficient of the three.

EXHIBIT II

Exhibit II is a compilation from form 423 and clearly indicates western coal is far and away the bargain of our national coal market.

EXHIBIT III

Exhibit III further refines this data by demonstrating that Montana and Wyoming coal, including their taxes, are a bargain within a bargain.

EXHIBIT IV

Exhibit IV vividly points out that oil on BTU basis costs almost two and a half what coal costs and natural gas 30 percent more. Updated statistics favor coal even more strongly.

EXHIBIT V

Exhibit V is an excerpt from a study done on coal costs for a major utility. You will note Montana's tax, though overstated for that time frame, is included. Eastern coal was almost two and a half times as expensive as Montana coal at the burn site.

EXHIBIT VI

Exhibit VI is a news release quoting the purchasing agent for Detroit Edison as to what a bargain Montana's coal was, tax and freight considered. This price advantage still exists.

EXHIBIT VII

Exhibit VII calls attention to sales taxes on electricity in states where Montana coal is sold which in some cases add three and four times more to electric bills than our tax.

EXHIBIT VIII

Exhibit VIII, again taken from Form 423, demonstrates that coal is considered less expensive than either oil or gas as a utility fuel.

EXHIBIT IX

Exhibit IX is a study done by the state of Texas as to taxes per million BTU's in the identified states on gas and oil.

The lower figure from Montana's Revenue Department indicates the severance tax on Montana coal in FY 77 was 7.11 cents per million BTU's. This compares very favorably with other states taxes on oil and natural gas.

EXHIBIT IX A

This shows the substantial increases in oil and gas production taxes that have occurred and will become even greater increases under decontrol of oil prices.

EXHIBITS X, XI & XII

Methodology Used To Estimate Cost To The Consumer

Each utility company's total revenues were divided into a system of common applications: fuel; all other operational costs; local, state and federal taxes paid directly by the utility; interest on debt; and dividends and retained earnings. The data came from each utility's "Comparative Consolidated Income Account," year ending December 31, 1977, as reported in Moody's Public Utility Manual, 1978.

The fuel costs were then disaggregated further by apportioning them between the delivered cost of Montana coal and all other fuel. The delivered cost of Montana coal was obtained from a summary print out of the Form 423 tape. The print out provides a utility-by-utility, plant-by-plant listing of tonnages, BTU content and delivered cost of coal from Montana. Other fuel costs were the residual after Montana coal costs were subtracted from total fuel costs.

The Montana coal cost was then broken down into two components -- transportation and product.

The transportation costs were estimated from data obtained from the Burlington Northern. The tariff summary is entitled "Annual volume, unit train coal rates." This report contains the various rates between each mine and destination. Because all transportation costs were not known it was assumed that all coal was shipped by unit trains and that this represents all the transportation costs. This underestimates total transportation costs as it ignores the costs associated with water transportation, ownership of cars (both Detroit Edison and Wisconsin Power and Light provide some of their own car sets) and train shipment in less than unit train volumes, which is more expensive. Because transportation costs are underestimated, the other components of the cost of coal, including the Montana production taxes, are overestimated. Working the entire analysis backwards produced figures that indicate that transportation costs may be underestimated by as much as 25 percent.

The components of the product portion of the Montana coal costs were then estimated by applying the percentage distribution of production costs reported by Montana producers. Although there is some variation between the different mines in the details of their production costs, the proportion that is production taxes, i.e. Severence tax, Resource Indemnity Trust tax and Gross Proceeds (local property taxes), since they are based upon common formulas, is common to all mines.

The result of all of the above was a percentage distribution of total revenues for each of the seven utilities. The next step was to combine the individual utility results into a meaningful average. It was decided to use a weighted average of the individual results. Since the object of the analysis was to estimate dollar costs to the consumer, weights would be assigned based upon the dollar costs to the utility. Total delivered cost of Montana coal to the utilities was summed and the weights determined. For example, since Commonwealth Edison paid 42.2 percent of the money used to purchase Montana coal, Commonwealth Edison's percentage distribution recieved 42.2 percent of the weight.

The resulting weighted average percentage distribution was then applied to the weighted average residential consumer's annual purchases of electric power (Moody's, 1978) to obtain the disaggregated cost to the consumer, which is reported in the table and illustrated in the pie charts.

Weights assigned to each utility

Central Illinois Light Company (CILCO)-	4.4 %
Commonwealth Edison ------------------	42.2 %
Detroit Edison -----------------------	8.1 %
Interstate Power (ISP)----------------	2.3 %
Minnesota Power and Light (MPL) -------	9.9 %
Northen States Power (NSP) ------------	24.9 %
Wisconsin Power and Light (WP&L) ------	8.2 %

Note: since the Lower Colorado River Authority is municipally owned, not enough information was available to include it in the analysis.

Percentage distribution of coal production costs in Montana

Mining and processing (inclules oiling)	26.5 %
Reclamation ----------------------------	2.7 %
Depreciation, Amortization and Management ----------------------	9.0 %
Production taxes ----------------------	24.0 %
Royalties and misc. federal fees and taxes* ------------------------------	12.8 %
Net income and income taxes -----------	25.0 %

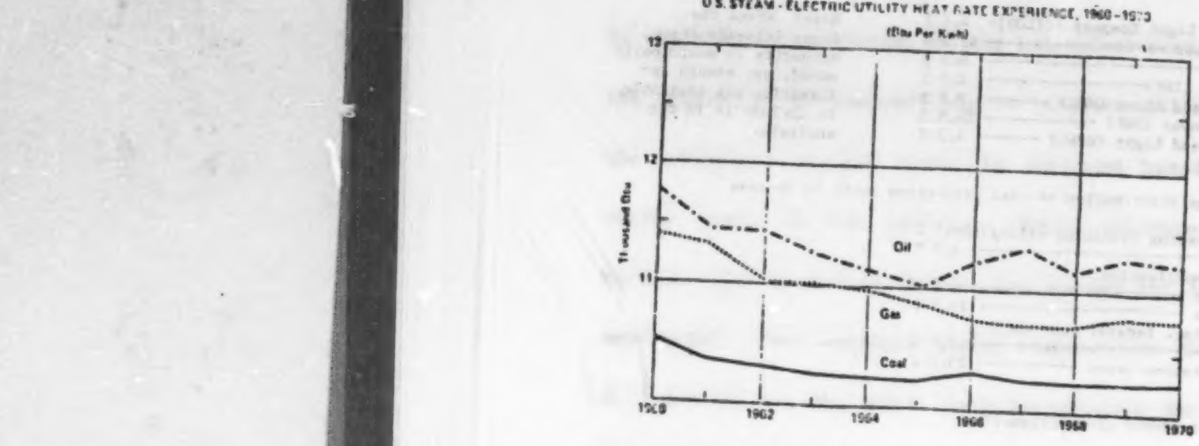
* Black lung, abandoned mine reclamation.

Exhibit I

Figure 1

U.S. STEAM - ELECTRIC UTILITY HEAT RATE EXPERIENCE, 1960 - 1970

(Btu Per Kwh)



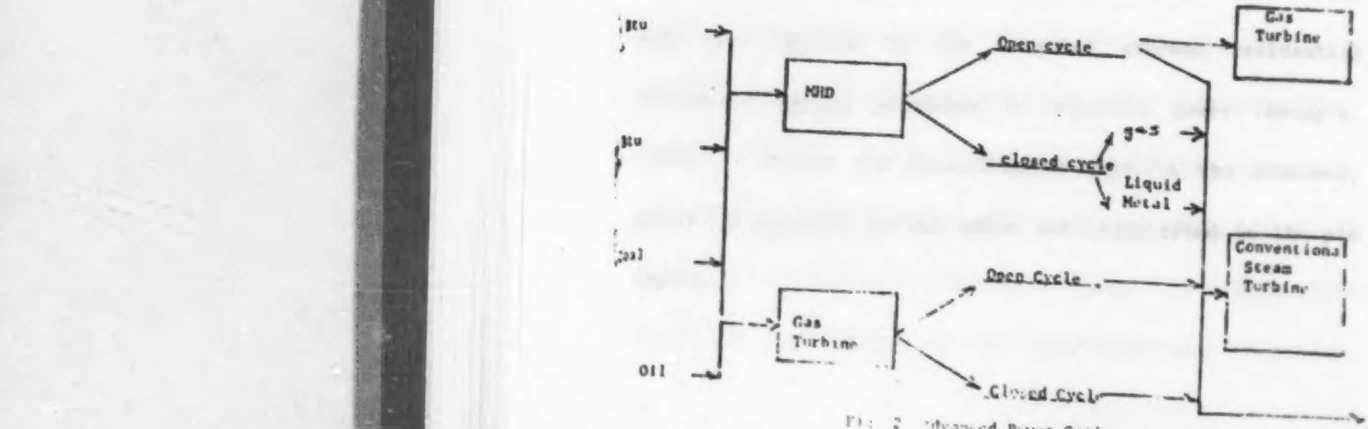

Btu
Btu
Coal
Oil
MHD
Gas Turbine
Open cycle
closed cycle
gas
Liquid Metal
Open Cycle
Closed Cycle
Gas Turbine
Conventional Steam Turbine

Fig. 2 Advanced Power Cycle

Exhibit II

TABLE 10

Regional Quantities and Prices of Coal Deliveries In 1978

	CONTRACT COAL		
	QUANTITY (1000 Tons)	PRICES ¢/Million Btu	$/Per Ton
North Eastern (New England & Middle Atlantic)	28,314.4	124.1	30.09
Mid West 7/ (East North Central & West North Central)	150,040.8	112.3	23.27
South East (South Atlantic & East South Central	107,436.1	123.7	22.34
West South Central	27,941.2	72.9	10.63
Western 8/ (Mountain & Pacific)	61,434.7	52.3	9.52
TOTAL	375,167.1	106.5	22.19

7/ Excluding North and South Dakota
8/ Including North and South Dakota

Exhibit III

TABLE 20

PRIMARY ENERGY PURCHASE DATA DURING THE PAST TWELVE MONTHS FOR ALL REPORTING PLANTS, 1978

GEOGRAPHIC REGION AND STATE	LINE	TOTAL BTU (BILLION)				% OF TOTAL BTU			AVG. PRICE, ¢ PER 10⁶ BTU			LINE
		COAL	OIL	GAS	TOTAL	COAL	OIL	GAS	COAL	OIL	GAS	
NEW ENGLAND												
CONNECTICUT	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MAINE	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MASSACHUSETTS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NEW HAMPSHIRE	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
RHODE ISLAND	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
VERMONT	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
.... TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MIDDLE ATLANTIC												
NEW JERSEY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NEW YORK	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PENNSYLVANIA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
.... TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
EAST NORTH CENTRAL												
ILLINOIS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
INDIANA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MICHIGAN	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OHIO	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WISCONSIN	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
.... TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WEST NORTH CENTRAL												
IOWA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
KANSAS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MINNESOTA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MISSOURI	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NEBRASKA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NORTH DAKOTA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SOUTH DAKOTA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
.... TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SOUTH ATLANTIC												
DELAWARE	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
DISTRICT OF COLUMBIA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FLORIDA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
GEORGIA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MARYLAND	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NORTH CAROLINA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SOUTH CAROLINA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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WEST VIRGINIA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
.... TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
EAST SOUTH CENTRAL												
ALABAMA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
KENTUCKY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MISSISSIPPI	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TENNESSEE	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
.... TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WEST SOUTH CENTRAL												
ARKANSAS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
LOUISIANA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OKLAHOMA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TEXAS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
.... TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MOUNTAIN												
ARIZONA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
COLORADO	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
IDAHO	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MONTANA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NEVADA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NEW MEXICO	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
UTAH	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WYOMING	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
.... TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PACIFIC												
CALIFORNIA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OREGON	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WASHINGTON	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
.... TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
UNITED STATES TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]

Exhibit IV

TABLE 3

Average Delivered Fossil Fuel Prices [illegible]
[illegible]

	1976		1977		1978		1979	
	Avg. Price 5/	% Change From 75	Avg. Price	% Change From 76	Avg. Price	% Change From 77	Avg. Price	% Change From 78
Coal	64.8	+ 4.2	[illegible]	+ 11.7	111.6	+ 17.5	+122.4	+ 9.7
Oil	170.[illegible]	- 1.7	[illegible]	+ 12.[illegible]	[illegible]19.0	- [illegible].9	+303.5	+ 38.6
Gas	101.4	+ 32.3	1[illegible]0.3	+ 25.1	142.6	+ 10.4	+175.4	+ 22.8
Average	111.3	+ 8.5	12[illegible].5	+ 15.8	140.9	+ 8.8		

Exhibit V

CM-5

COAL PRICES -- 1975*/

	Price/Ton
Eastern Coal	
Coal at Mine	$34.00
Freight to Utility	7.32
	$41.32 **/
Western Coal	
Coal at Mine	$ 5.87
Rail Freight to Duluth	6.14
Storage, Dumping to Ship	1.40
Ship Freight to Utility	3.00
Montana Coal Severance	1.50
	$17.91 ***/

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*/ Leonard F. C. Reichle, "The Economics of Nuclear Power", August 27, 1975.

**/ Based on a 1975 Ebasco study for a major Eastern electric utility company.

***/ William Meese, President, Detroit Edison Co., "Coal Week", August 4, 1975.

Exhibit VI

Ann Arbor News - 24 Jul 1975

Detroit Edison To Buy Coal From Montana

ST. CLAIR (AP) — Detroit Edison's 26-year contract to buy low-sulfur coal from a Montana strip mine operation is an effort to avoid the soaring cost of Appalachian deep-mined coal, an Edison official says.

Robert Lundgren, Edison vice president of administration, said the Montana coal deal would have been "inconceivable even five years ago," because of high freight costs.

But now — despite transportation costs and the controversial 30 per cent Montana coal tax — Edison estimates western coal prices will be about 40 per cent lower than comparable Appalachian fuel.

The soaring cost of eastern coal has changed the ground rules, said Lundgren. He said other utilities east of the Mississippi River are considering Montana or Wyoming strip-mined coal for future supplies.

Edison will ship coal 900 miles from Decker Coal Co. in Decker, Mont., by rail to Superior, Wis., where Edison is building a $40 million dock. Superfreighters will take the coal 800 miles through the Great Lakes to a big electric power plant in St. Clair, north of Detroit.

The first of the superfreighters, a 770-foot ship, was to be launched today. It is to carry its maiden Montana load next April after the Great Lakes reopen for shipping.

Freight costs are triple the price of the Montana coal, Lundgren said. But he contended the cost of the fuel is so low compared with coal mined in Appalachia that in the long haul it will more than pay for itself. He estimated the savings over eastern coal could be $1 billion for the 200 million tons to be delivered from Decker in the next 26 years.

The price of coal which Edison buys from Ohio, West Virginia and Pennsylvania has tripled since 1969, said Lundgren, "making the inconceivable possible."

Lundgren estimated Montana coal will cost Edison ratepayers 30 per cent less than high sulfur Appalachian coal and 40 per cent less than the low-sulfur coal Edison needs to comply with emission standards.

"Higher prices for eastern coal result partly from production costs in Appalachia; moreover compliance with new deep mine health and safety laws have reduced productivity," an Edison spokesman said.

He said the productivity rate in Eastern mines averages 10 to 15 tons per worker-day, while easy but controversial stripmine methods result in a productivity rate of 100 tons.

"Some low-sulfur coal is available from Eastern Appalachian mines that will meet federal requirements, but it is very costly," he said.

Exhibit VII

17 March 1980

1.) Minnesota - Sales & Use Tax
(Electricity included)
4% of gross receipts.
Some city sales tax in addition.

2.) Illinois - Retailers' Sales Tax Or Service Occupation Sales & Use Tax
4% of gross receipts.
City and county sales tax in addition.

3.) Wisconsin - Sales & Use Tax
4% of gross receipts.
However, sale of electricity for residential or farming use exempt from the tax from October through April (Ch. 1, Laws 1979).
Counties may improve an additional ¼ of 1%.

4.) Iowa - Retail Sales Tax
(Electricity specifically included)
3% of gross sales.
No local tax.

5.) Michigan - Occupational Retail Sales Tax
(Sales of electricity specifically included-ser. 205.5)
4% of gross proceeds from retail sales.
No local tax.

6.) Indiana - 2% of gross receipts

Exhibit VIII

1978

	COAL	OIL	GAS	
Commonwealth Edison	73.6	22.7	3.7	% Total BTU's Delivered
	56.2	37.0	6.9	% Fuel Cost
Detroit Edison	81.8	14.4	3.8	% Total BTU's Delivered
	67.7	26.9	5.4	% Fuel Cost
Minnesota Power & Light	93.3	6.7	.0	% Total BTU's Delivered
	83.8	16.1	.01	% Fuel Cost
Northern States Power Company	98.3	1.7	.0	% Total BTU's Delivered
	88.4	11.5	1.0	% Fuel Cost

SOURCE: Cost and Quality of Fuels For Electric Utility Plants - 1978

F.P.C. Form No. 423

Exhibit I

Table I

Tax Burden on Oil and Gas Production *
(figures in ¢ per million BTUs)

Tax	Texas (FY77)	Louisiana (FY78)	Oklahoma (FY78)	New Mexic (FY77)
Severance	6.36	10.26	8.13	7.95
Ad Valorem	2.28	-	-	-
Sales	.22	.32*	.21*	.63
Franchise	.14	.05*	.04*	.02*
Corporate Income	-	.69*	.37*	.46
Total	9.00	11.32	8.75	9.06

*Tax burden estimated - see appendix.

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[1] The appendix to this report discusses the conversion process and th data and estimates used to make the calculations.

TABLE II

Comparison of Severance and Production Taxes
on Oil and Gas
(figures are in ¢ per million BTUs)

		Oil	Gas	Oil and Ga
Texas	(FY77)	6.56	6.18	6.36
Louisiana	(FY78)	16.63	6.93	10.26
Oklahoma	(FY78)	12.58	5.95	8.13
New Mexico	(FY77)	10.76	6.51	7.76

Montana Coal Severance Tax (FY77) **
¢ per million BTUs 7.11
(assumes 18 million BTUs per ton)

*** Compiled by Comptroller of Public Account**
State of Texas - Austin, Texas

**** State of Montana Department of Revenue**

STATE OF TEXAS

Exhibit IXA

STATE REVENUE[1]
(Amounts in Millions of Dollars)

	Monthly Revenue			Year-to-Date September 1979–December 1979		
Tax Collections by Major Tax	October 1979	November 1979	December 1979	Revenue	Change From Last FY	
Sales Tax	$132.1	$ 304.1	$130.7	$ 467.6	$+ 83.4	+14%
Natural Gas Production Tax	59.7	55.8	57.8	229.4	+ 57.6	+34
Motor Fuels Taxes	30.7	43.1	33.7	150.4	+ 1.7	+ 1
*Oil Production Taxes	57.7	77.0	64.4	211.0	+ 71.0	+51
Motor Vehicle Sales Tax	35.6	36.2	36.1	146.8	+ 10.7	+ 7
Cigarette and Tobacco Taxes	28.6	26.5	25.5	104.9	+ 3.5	+ 3
Corporation Franchise Tax	2.8	1.5	1.0	7.8	+ 2.0	+35
Alcoholic Beverage Taxes	15.1	16.3	16.8	64.7	+ 7.6	+13
Insurance Companies Taxes	0.7	0.1	0.2	1.1	- 1.3	-54
Utility Taxes[2]	0.7	26.5	0.1	32.0	+ 3.4	+12
Inheritance Tax	10.0	10.2	3.9	26.8	+ 6.5	+29
Ad Valorem (Property) Tax	0.2	0.7	0.3	1.3	- 6.7	-83
Telephone Tax	0.3	13.6	.6	14.2	+ 1.8	+15
Other Taxes[3]	3.6	2.3	1.2	13.2	+ 2.1	+19
TOTAL TAX COLLECTIONS[4]	$307.0	$ 367.6	$341.9	$1,307.4	$+242.6	+19%
Revenue by Source						
Tax Collections (detail above)	$307.0	$ 367.9	$341.9	$1,307.4	$+242.6	+19%
Federal Funds	200.4	165.0	188.6	704.9	+ 43.3	+ 6
Interest Income	54.4	[illegible]	92.2	318.7	+ 75.6	+31
Licenses and Fees	37.1	31.2	32.1	136.9	+ 36.6	+37
Land Income: Rents, Royalties, Sales	47.4	[illegible]	27.0	156.1	+ 45.1	+40
Other Revenue Sources[5]	10.6	9	31.1	41.3	+ 18.4	+80
TOTAL REVENUE[4]	$ [illegible]	$1,0[illegible]	$[illegible]	$3,127.4	$+462.1	+17%

[1] Excludes some revenue not cleared through the Comptroller's Office

[2] Includes the Utility Tax, Gas Utility Administration Tax, and the Public Utility Commission Gross Receipts Tax

[3] Includes the Hotel-Motel, Cement and Sulphur Taxes and other miscellaneous [illegible] taxes not separately identified

[4] Totals may not add due to rounding

[5] Patient Maintenance and Support Fees, Grants, Donations and Miscellaneous Revenue

TABLE 1

DECONTROL AND OIL PRODUCTION TAX REVENUES FISCAL YEARS 1979-81

Fiscal Year	Estimate of Production (Millions Bbls.)	Tax Collections Without Decontrol (Millions of $)	Tax Collections With Decontrol (Millions of $)	Increase
1979	1,005.1	$ 453.2	$ 453.2	$ ---
1980	973.3	471.4	603.4	132.0
1981	942.6	485.9	698.4	212.5
TOTAL	2,921.0	$1,410.5	$1,755.0	$344.5

TABLE 2

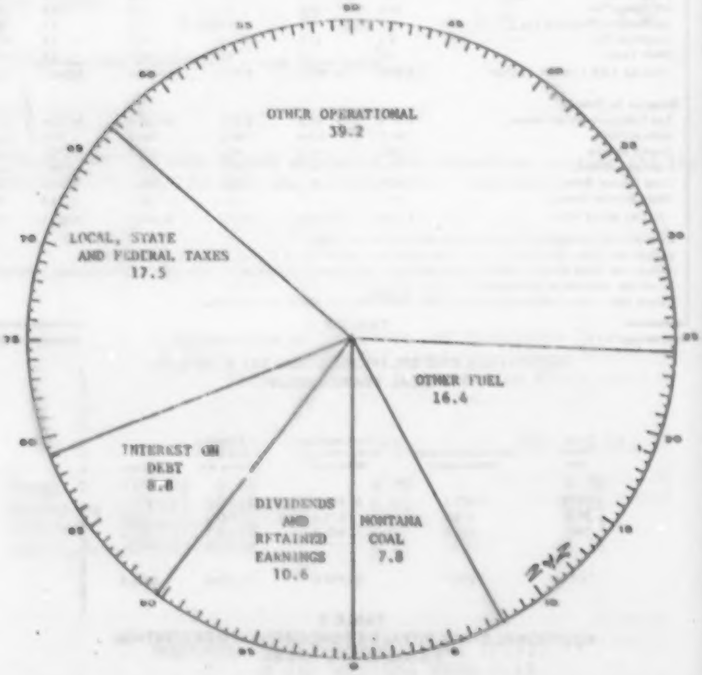
ADDITIONAL STATE ROYALTIES UNDER PHASED DECONTROL FISCAL YEARS 1979-81

Fiscal Year	Oil and Gas Royalties Without Decontrol (Millions of $)	Oil and Gas Royalties With Decontrol (Millions of $)	Increase
1979	$ [illegible]	$ [illegible]	[illegible]
1980	34[illegible].9	[illegible]	[illegible]
1981	[illegible]4.7	41[illegible].1	[illegible]
TOTAL	$1,[illegible]	$1,15[illegible].9	[illegible]

Source: Comptroller of Public Accounts, [illegible]

Exhibit X

Percentage Distribution of Costs
Weighted* Average of the 7 Major Out-of-State Utility Customers
1977



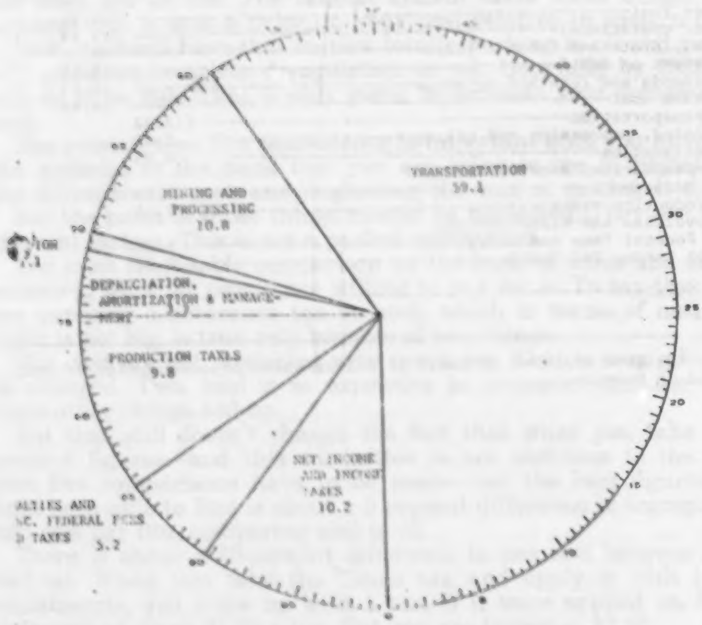
*Weights assigned on basis of dollar value of consumption of Montana produced co

Exhibit XI

Percentage Distribution of Components of Delivered Cost of Coal

Weighted* Average of the 7 Major Out-of-State Utility Customers

1977



*Weights assigned on basis of dollar value of consumption of coal mined in Montana.

Exhibit XII

Table II. Average yearly cost to the residential utility customer
Various utility and mining costs
Weighted[1] average of the 7 major out-of-state utility customers, 1977

Cost category		Average
Other fuel		$47.40
Other operational		113.29
Local, State and Federal taxes		50.58
Interest on debt		25.43
Dividends and retained earnings		30.63
Montana coal		22.54
Transportation	$13.32	
Mining, processing and oiling	2.43	
Reclamation	0.25	
Depreciation, amortization and management	0.83	
Production taxes	2.21	
Royalties and miscellaneous Federal fees and taxes	1.17	
Net income and income taxes	2.30	
Total		$289.00

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[1] Weights assigned on basis of dollar value of consumption of coal mined in Montana.

Mr. **Gramm.** Well, if I may, since we are running along in time, I think that, Mr. Christiansen, you made some very good points here. But the point remains that I will trade you two Btus of coal for every Btu of oil or gas that you will trade me.

We have a free market in coal. Montana coal is good coal. If it were not good coal, we would not be here. No one would give a damn what kind of severance tax you have on it. Everybody wants it. It is low sulfur. It is good coal. They pay a premium for it.

You have a free market price in coal. The market price system is not stupid. They know what it is worth. They know what the costs are. They know what the costs are in scrubbing. They know what the costs are in use. The market system takes those things into account, and it sets a price on your coal relative to eastern coal.

Now, we don't have that market totally working in oil and gas. It will when we complete deregulation on oil. Hopefully by 1985 we will do it on gas. That is only going to increase your demand for coal.

The point is that Btu equivalence is important once you have got the material to the point that you are going to use it, neglecting the difference in cost, and neglecting the cost of getting it there.

But the point is those things cannot be neglected. They are very relevant factors. This is not a perfect comparison.

The most reasonable comparison on the basis of value and use is measured by what people are willing to pay for it. To say that you are imposing a severance tax on coal, which in terms of national input is not big, is true only because of two things.

One, you are not producing very much yet. That is soon going to be changed. Two, coal is so expensive to transport and use that these other things add up.

But that still doesn't change the fact that when you take into account figures—and this committee is not oblivious to the fact that Btu comparisons have to be made—but the best figures we have been able to find is about a 5 percent difference in transportation cost per Btu, comparing coal to oil.

There is about a 30-percent difference in use cost between coal and oil. When you take the Texas tax and apply it with these adjustments, you come up with a tax, if it were applied on Montana coal, of about $1.30 a ton. But you are taxing at $2.40.

So, those in my mind simply represent basic facts. I am not disenchanted with Btu's. The point is that there is no market for Btu's. It is a market for Btu's at the point of use given the cost of use. I just don't think that can be thrown out the window.

I think one point that has been greatly understated here and it is a point that I am very aware of given that I am from east Texas.

We have got a lot of towns in my district that were shut down after the oil boom and have never really recovered. You act as if those people are going to move off and leave those big holes in the ground like they did in West Virginia.

That is not the case. You are going to force them to reclaim. The aquifer problem is a real problem. It is a relevant point, and that is something that seems to me in your requirement for reclamation you ought to take into account, the people who are mining the coal.

Finally, with regard to underground aquifers, that is a problem we got in Texas because our oil deposits have been used and we are going back into water flooding, chemical engines, secondary and tertiary recovery, and we don't know what we are doing to the underground water supply.

We are trying to measure it but there are costs involved in growth. Growth has some destructive elements.

I understand that you in Montana want to protect your State and I think that is the most natural thing in the world.

The question that Congress has to make a decision on is at what point are you not protecting Montana but, in turn, exploiting the country.

Our Senator very cleverly turned the table on me by having me agree to his point, but he is agreeing to my point. He has admitted that at some point he would admit that a severance tax could be usurious.

The question is at what point? Having given a speech, let me give each one of you a minute or so to respond, and let me get on to the rest of the people.

Mr. **Christiansen**. I have one more exhibit and this will make you very pleased because it projects the revenue that will come to Texas after the decontrol of oil, and the revenue that has come to Texas, of course, the base for the taxes.

So much has been said about the effect on the utilities that I believe it would be unfair for me to blow this ground in front of the subcommittee.

We had some flip charts made and those analyses which Representative Marlenee referred to and Senator Baucus were solidly done, and I would share because of your background the reason and the rationale that we did.

We have looked at the weighted averages of our delivery of coal and looked at the total cost of the production of coal, including transportation, and looked at the total utility cost, including the relationship between other fuels in Montana.

Because of your backgrounds I would submit for the record that these are accurate figures and that the composite punch line of the effect of that tax on the new utilities we are delivering, and I had to use calendar 1977 deliveries because I couldn't get the update, but I think our case will look better under update because freight rates have gone up, but the punch line is that the effect on the tax of the utility bill of those people based on those charts that you are now looking at is 0.0076—76/100 of 1 percent.

Now, I don't want to be unfair to this committee, so let me say where we made a total delivery to one utility of Montana coal and it came to 2 percent, but where we blended the delivery of Montana coal with other high costs we looked that much better, because our coal is a bargain at the burn site or whether it be at Detroit Edison or Commonwealth Edison.

Mr. **Gramm**. I want to tell you if for no other reason but self-defense I intend to read every word that you have written, because you have done a lot of work. I rejoice that Texas is going to earn a lot of severance taxes and Montana can become rich on it at 12½ percent by affecting not the tax but the output, and the country is ready.

Let me thank you all.

Senator BAUCUS. I might add we have one other Congressman in Montana, Congressman Williams. He would have been here today but he has a prior engagement in Montana.

Mr. GRAMM. We had Mr. Marlenee ask the two Members of Congress who had appeared before him to stay through his testimony.

Mr. Oberstar and Mr. Vento stayed throughout that testimony.

Senator BAUCUS. We plan to stay.

Mr. GRAMM. Senator, you have done a good job, and I appreciate you all coming before our subcommittee.

Our next witness today is my attorney general, so we are going to get a preview of this lawsuit in Montana.

Mark White has taken a very active role, as has Attorney General Greely, in this debate within the courts, and looking around our State in terms of getting somebody to come and talk about the issue, not to talk about Texas' vested interest, though we in Texas have our vested interest as people in Montana, but somebody to talk bout the facts and the issues. I came up with the most effective Texan who could present this analysis from the point of view of its impact on Texas and the legal aspects of the problem.

In attempting to find somebody to do that, I asked Mr. Mark White. We are very honored to have you before the subcommittee.

STATEMENT OF MARK W. WHITE, ATTORNEY GENERAL, STATE OF TEXAS

Mr. WHITE. I am very honored to appear before this subcommittee, and I have been fortunate to have the opportunity to sit through much of the testimony which has been proffered to this subcommittee in support and opposition to H.R. 6625.

I was almost persuaded by the pleas made by those gentlemen from Montana, but was forced to reconsider when one of the Congressmen suggested that coal was cheap and clean. Apparently, they are keeping that coal in Montana, because they are sending the dirty, expensive coal to Texas.

I would like to let the subcommittee know that Texas is not looking only at the severance tax on coal being charged by Montana and Wyoming, but we are also fighting the exorbitant railroad rates which are being charged for the transportation of that coal.

We have taken a position which hopefully will result in more reasonable railroad rates and hopefully more reasonable severance taxes.

We have not yet begun to fight. We are in the Montana courts. I am looking forward to appearing before the Supreme Court of Montana this spring. I suspect that we will be in an appellate position possibly before the Supreme Court of the United States.

One of the characteristics that I think has been overlooked in this testimony to this point is that in comparing relative costs of coal versus oil and gas and Btu equivalancy, Texas does not have a choice.

We are required to make the conversion from natural gas to coal for the generation of electricity or boiler use. We have no opportunity to select alternative energy sources.

The alternatives that we are forced to draw upon are the alternatives of which coal do we buy? We started off with Montana and

Wyoming because of severance taxes and railroad rates, and we now see the rather terrible incongruity of being able to purchase coal in Poland, South Africa and Australia at competitive prices with coal purchased in our sister States of Wyoming and Montana.

I think that points out dramatically the error of the policies that are being presented by virtue of an increase in severance taxes. That, coupled with those other regulated increases in costs of coal have placed American coal in a precarious position in the world market.

The only difference now between the cost of coal in Poland, South Africa and Australia between the coal from Montana and Wyoming, in San Antonio, Tex., today is the cost of transportation by rail from the coast of Texas to San Antonio, so the economics are moving very swiftly and moving to the detriment of the consumer in Texas and in other States.

There has been much said about the fact that there are utility companies involved in consumer lives. That points out dramatically that big business as well as consumers have an interest in trying to hold down costs of generation of electricity and the costs to the business community and the consumer.

It is a worthy point that the industries who are passing through these costs are trying to hold down the cost of their product to their consumer. Those consumers not only are Texas and individuals, but it is also industry in Texas.

They mention the fact that Texas is gaining in its severance tax revenues. I don't think it was pointed out that 78 percent of that severance tax revenue is paid by Texans. Twenty-two percent is placed in the interstate market, so that comparison has not been made with the Montana coal severance tax where 100 percent, or approaching 100 percent is paid by the interstate market.

Texas, as I mentioned earlier, does not choose to burn coal for generation of electricity. We are required to. The Natural Gas Pricing Act and other bills not only persuade but command that we no longer generate electricity with natural gas.

We much prefer it, and as was pointed out by this subcommittee we would gladly opt back to the generation of electricity with natural gas. The economic impact of this severance tax is two-fold, first upon the consumer, and second on industry.

The consumers in the Houston Lighting & Power Co. service area alone over the next 25 years, assuming no increase in the price of coal from Montana, will pay $500 million to the treasury of Montana.

That is just the Houston Lighting & Power Co. alone, and most of the coal purchased in Montana is only now coming on line in Texas, so that will mount up many times over in the next 25 years.

The impact on Texas industry as the result of this exorbitant tax is that we will be paying even higher prices for the products for that industry.

We have had dwindling resources in Texas, and our national policy is trying to achieve energy independence. Today Texas has one-eighth of the Nation's large industrial boilers, and 37 percent of the natural gas used for large boilers is used in Texas.

The conversion costs from natural gas to coal, half of which will be borne in the State of Texas alone, are substantial. The surcharge that is being exacted by Montana for the use of that fuel is added to it.

I believe the subcommittee indicated that the remarks that I had prepared will be included in the record, and I will therefore conclude my testimony at this time and be pleased to answer any questions the subcommittee might have.

[Mr. White's prepared statement follows:]

TESTIMONY OF ATTORNEY GENERAL MARK WHITE OF TEXAS
BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
MARCH 21, 1980

MR. CHAIRMAN, MEMBERS--

I AM GRATEFUL FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE. IN RECENT YEARS, YOU HAVE WRESTLED WITH THE THORNY COMPLEXITIES OF THIS NATION'S ENERGY NEEDS, AND I BELIEVE THAT REAL PROGRESS IS BEING MADE AS A RESULT OF YOUR EFFORTS.

MY APPEARANCE HERE TODAY IS OCCASIONED BY A DEVELOPMENT WHICH IS CERTAIN TO IMPEDE THAT PROGRESS AND WHICH IS CONTRARY TO THE NATIONAL ENERGY POLICY AS YOU HAVE DEFINED IT.

THAT DEVELOPMENT PORTENDS UNHAPPY CONSEQUENCES FOR THE PEOPLE OF TEXAS AND I APPEAR ON THEIR BEHALF AS THEIR ATTORNEY GENERAL. THE FACT IS, HOWEVER, THAT THOSE UNHAPPY CONSEQUENCES EXTEND FAR BEYOND THE BOUNDARIES OF TEXAS, IMPACTING MANY OF OUR SISTER STATES INDIVIDUALLY AND THE NATION AS A WHOLE. FOR THAT REASON AS PART OF THE BROAD SCOPE OF THIS PROBLEM, I ALSO APPEAR IN A DUAL ROLE AS A MEMBER OF THE NATIONAL COAL CONSUMERS ALLIANCE.

MR. CHAIRMAN, SURELY AT THIS LATE HOUR IN OUR ENERGY STRUGGLES, IT MUST BE WELL UNDERSTOOD BY ALL KNOWLEDGEABLE AND INFORMED AMERICANS THAT ENERGY SELF-SUFFICIENCY IS THIS NATION'S GOAL. THE UNDENIABLE LINK BETWEEN THAT GOAL AND OUR WELL-BEING AS A PEOPLE IS SO CLEAR AS TO MAKE ITS ACHIEVEMENT AN IRREFUTABLE IMPERATIVE.

SURELY, AT THIS LATE HOUR, IT MUST BE CLEARLY UNDERSTOOD BY ALL KNOWLEDGEABLE AND INFORMED AMERICANS THAT THE PATH TOWARD THAT INDEPENDENCE BEGINS WITH DEVELOPMENT OF OUR COAL RESERVES.

I CAN TELL YOU, MR. CHAIRMAN, THAT TEXAS CERTAINLY HAS THAT UNDERSTANDING.

EVEN BEFORE CONGRESS IN 1974 PASSED THE 1st OF 3 MEASURES WHICH WOULD BE ADOPTED IN THE ENSUING 6 YEARS DEALING WITH COAL CONVERSION, TEXAS HAD MANDATED INDUSTRIAL BOILER CONVERSION TO COAL.

IT WAS AND IS MUCH MORE EXPENSIVE THAN THE NATURAL GAS WHICH WE HAVE IN AMPLE SUPPLY. THE DECISION TO CONVERT WAS NOT MADE BECAUSE IT WAS ECONOMICALLY PREFERABLE. IT WAS MADE BECAUSE CONVERSION WAS IN THE NATIONAL INTEREST.

THAT IS REALLY WHY I AM HERE TODAY, MR. CHAIRMAN--TO TALK WITH YOU ABOUT THE NATIONAL INTEREST.

AN EXAMINATION OF STATE SEVERANCE TAXES ON OIL, GAS, AND COAL REVEALS THAT NO STATE TAX ON ANY OF THESE KEY ENERGY-PRODUCING MINERALS EVEN REMOTELY APPROACHES 30%. THIS COMPARISON DEMONSTRATES THAT THE 12.5% LEVEL ESTABLISHED BY MR. SHARP'S BILL EXCEEDS VIRTUALLY ALL STATE SEVERANCE TAXES ON ALL RELEVANT MINERALS EXCEPT THOSE TAXES IMPOSED ON COAL BY MONTANA AND WYOMING.

WITH THAT FRAME OF REFERENCE, I WANT TO ADDRESS 2 ISSUES.

AS ATTORNEY GENERAL, I WANT TO DESCRIBE FOR YOU WHAT I PERCEIVE TO BE THE IMPACT OF THE MONTANA AND WYOMING SEVERANCE TAXES ON THE CONSUMERS OF TEXAS.

AS A MEMBER OF THIS ALLIANCE, I WANT TO SPEAK TO THE WAY THESE TAXES IMPEDE ATTAINMENT OF ENERGY INDEPENDENCE.

IN TEXAS, THE ECONOMIC IMPACT OF THE PRESENT SEVERANCE TAX SITUATION IS TWO-FOLD. FIRST, CONSUMERS MUST MEET THE BURDEN OF THE TAX. UTILITIES WHO PAY THE TAX PASS THAT COST ALONG TO RATEPAYERS. OTHER INDUSTRIES, ALTHOUGH NOT ABLE TO PASS ALL COSTS ON, ARE NEVERTHELESS FORCED TO CHARGE MORE FOR THE GOODS THEY PRODUCE. THE CONSUMER ULTIMATELY PAYS THE BILL. IN THE HOUSTON AREA ALONE, ELECTRIC RATEPAYERS WILL PAY ONE-HALF BILLION DOLLARS TO THE MONTANA TREASURY THROUGH FUEL ADJUSTMENT PASS THROUGHS. THAT FIGURE, I MIGHT ADD, IS BASED ON THE EXPEDIENT BUT UNLIKELY PROPOSITION THAT COAL PRICES--AND THEREFORE THE AMOUNT OF SEVERANCE TAX PAID--WILL NOT INCREASE OVER THE NEXT 25 YEARS.

IF YOU CONSIDER INFLATION, HOWEVER, AS WELL AS THE CERTAIN BUT LESS READILY IDENTIFIABLE COST INCREASES OF OTHER GOODS OR SERVICES ATTRIBUTABLE TO THE TAX, THE BILL INCREASES GREATLY. MOREOVER, IF YOU EXPAND THE AREA OF CONSIDERATION BEYOND HOUSTON TO ALL OF TEXAS AND REMEMBER THAT OUR NATION'S COAL RESOURCES ARE CAPABLE OF BEING PRODUCED--AND TAXED--FOR HUNDREDS OF YEARS, THE BILL BECOMES LITERALLY BILLIONS OF DOLLARS.

THE SECOND AREA OF IMPACT I WOULD LIKE TO DISCUSS IS LESS OBVIOUS, BUT PROBABLY MORE PERVASIVE AND THAT IS THE EFFECT OF THE EXHORBITANT TAX ON TEXAS INDUSTRY. TEXAS IS NOT ONLY THE LARGEST PRODUCER OF ENERGY, BUT IS ITS LARGEST CONSUMER AS WELL. THE READY AVAILABILITY OF ENERGY AND ITS INTENSIVE UTILIZATION HAVE DEVELOPED THE TEXAS ECONOMY AND HAVE FOSTERED OUR GROWTH INTO ONE OF THE MOST INDUSTRIALIZED AND THE 3rd MOST POPULOUS STATE OF THE NATION. DWINDLING RESOURCES AND EXIGENCIES OF NATIONAL POLICIES, HOWEVER, ARE HAVING A PRONOUNCED EFFECT UPON TEXAS INDUSTRY. FOR EXAMPLE, TEXAS HAS ONE-EIGHTH OF THE NATION'S LARGE INDUSTRIAL BOILERS. THIRTY-SEVEN PERCENT OF NATURAL GAS USED FOR LARGE BOILERS IS USED IN TEXAS.

ACCORDING TO A DEPARTMENT OF ENERGY STUDY, ONE-HALF OF THE COSTS NECESSARY TO CONVERT THE NATION'S BOILERS TO THE USE OF COAL--MANDATED BY THE POWERPLANT AND INDUSTRIAL FUEL USE ACT--WILL BE BORNE IN TEXAS. THESE COSTS ALONE ARE SUBSTANTIAL, BUT WHEN AN EXHORBITANT SURCHARGE FOR THE USE OF FUEL IS ADDED, THE RESULT CANNOT HELP BUT BE ADVERSE TO OUR ECONOMY.

EVEN IF THIS COMMITTEE WERE TO HOLD ASIDE ALL OF THE TALES OF ECONOMIC HARDSHIP AND INEQUITY ARISING FROM THIS TAX, I SUBMIT THAT PASSAGE OF H.R. 6625 IS STILL REQUIRED BY THE IMPERATIVE OF THIS NATION'S ENERGY PLAN.

THESE HIGH TAX LEVELS DO NOT ENCOURAGE DEVELOPMENT OF COAL--THEY IMPEDE DEVELOPMENT. YOU WILL FIND APPENDED TO MY STATEMENT A SIMPLE GRAPH DEMONSTRATING THAT COAL PRODUCTION IN MONTANA GREW STEADILY AND SIGNIFICANTLY UNTIL 1975 WHEN THEIR 30% TAX WAS IMPOSED. WHEN MONTANA'S PRODUCTION STALLED AT THAT POINT, WYOMING'S PRODUCTION MUSHROOMED EVEN AT A 17% SEVERANCE TAX.

I DO NOT SUGGEST, AS HAVE SOME, THAT MONTANA SEEKS INTENTIONALLY TO FRUSTRATE COAL PRODUCTION, DISREGARDING THE NATIONAL INTEREST AS YOU HAVE DEFINED IT. WE IN TEXAS, HAVING SUPPLIED OVER 25% OF ALL THE ENERGY CONSUMED BY THIS COUNTRY, CONTINUE TODAY TO PRODUCE AS MUCH OIL AND GAS AS IS ECONOMICALLY POSSIBLE AS RAPIDLY AS POSSIBLE. FRANKLY, THAT RESULTS IN UNFAVORABLE FIELD PRESSURES AND MAY WELL NOT BE IN OUR STATE'S BEST SELFISH INTEREST. OUR SELFISH INTEREST WOULD DICTATE A SLOWER RATE OF PRODUCTION INSURING ABSOLUTE MAXIMUM RECOVERY.

BUT THE NATIONAL INTEREST IN RECENT YEARS HAS CALLED FOR FULL PRODUCTION.

TEXAS HAS RESPONDED AS BEST SHE COULD--AND TO HER OWN DETRIMENT.

ALL ENERGY PRODUCING STATES MUST BE EXPECTED TO RESPOND ACCORDINGLY. AS THE EMPHASIS SHIFTS FROM OIL AND GAS TO COAL, ALL COAL PRODUCING STATES MUST RESPOND ACCORDINGLY.

HIGH SEVERANCE TAXES PREVENT THE LEVELS OF COAL RESOURCE DEVELOPMENT FOR WHICH YOU HAVE CALLED.

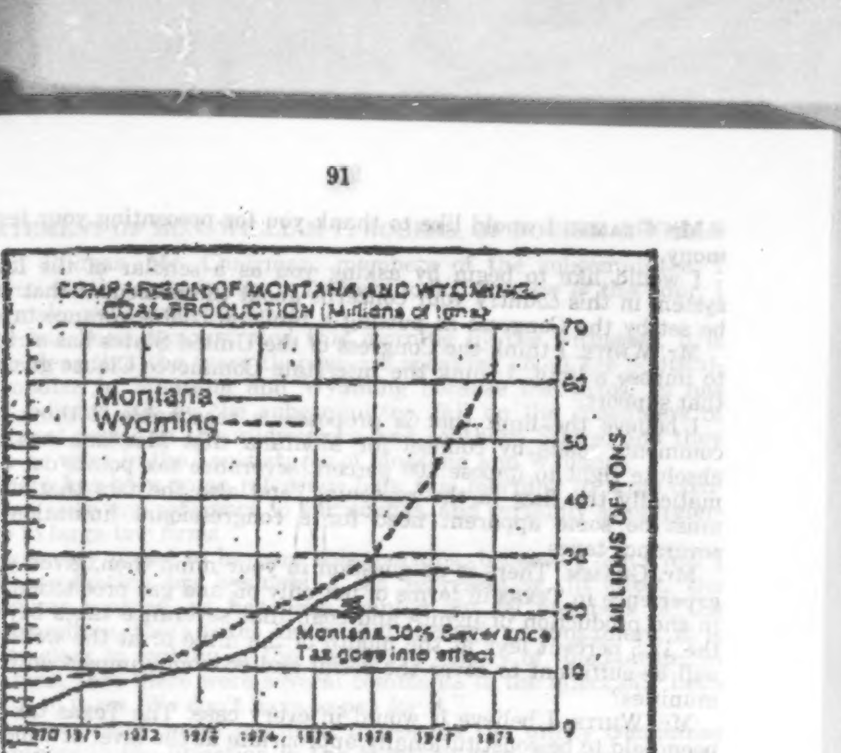
CERTAINLY TEXAS UNDERSTANDS BETTER THAN ANY OTHER STATE ALL OF THE LEGITIMATE PURPOSES SERVED BY SEVERANCE TAXES.

WE WOULD NEVER SEEK TO DENY ANY SISTER STATE THE FULL AND PROPER BENEFITS WHICH ARE THEIR JUST DUE FROM A FAIR AND EQUITABLE TAX.

I SUBMIT TO YOU THAT H.R. 6625 AFFORDS FULL COGNIZANCE AND PROTECTION FOR THOSE RIGHTS WHILE PROTECTING THOSE AMERICANS WHO CANNOT BE OTHERWISE PROTECTED AND HELPING TO INSURE THAT THE NATION'S ENERGY GOALS ARE MET AS YOU HAVE DEFINED THEM.

THANK YOU.

Mr. Chairman. I would like to thank you for presenting your testimony.



From 1970 until 1975, roughly equal amounts of coal were dug in Wyoming and Montana.

[illegible]

I would like to thank all of you who have attended this hearing. As those of you in the audience can see, this is a very volatile, emotional issue, as of course it should be when you are talking about the rights of States and when you are talking about the [illegible]

I would like to note before going on to our next witness that my colleague on this subcommittee who sits on the left side is Representative Loeffler from San Antonio, who is also extremely interested in this important bill, but was unable to be with us due to a prior commitment but expresses his thanks to Attorney General White for attending.

Our next witness is the Honorable William Rogers of Rogers and Wells in New York.

Mr. **Gramm**. I would like to thank you for presenting your testimony.

I would like to begin by asking you as a scholar of the legal system in this country your concerns about the precedent that will be set by the Congress in putting a limit on coal severance taxes.

Mr. **White**. I think the Congress of the United States has a right to impose a limit. I think the Interstate Commerce Clause gives it that support.

I believe the limit that is proposed is reasonable. I think the comments made by counsel for Montana that Montana has the absolute right to impose 100 percent severance tax points out dramatically the flaw in the reasoning, and also the fact that there must be some apparent need for a congressional limitation on severance taxes.

Mr. **Gramm**. There is no question in your mind then, given your experience in Texas in terms of not only oil and gas production but in the production of lignite and coal, that severance taxes beyond the 12.5 percent levy at the mouth of the mine or at the wellhead will be sufficient to cover the social and economic impact on communities?

Mr. **White**. I believe it would in every case. The Texas tax has been held to be constitutionally appropriate at the level at which it is maintained at this time.

Mr. **Gramm**. At the same time that we proceed along legislative lines, is it your intention as a representative of the State of Texas to pursue your lawsuit against the State of Montana?

Mr. **White**. Yes, we do; and we feel that the 30 percent level of severance tax in Montana is unconstitutionally burdensome on interstate commerce and we are going to continue to exert our legal remedy.

I think it is more appropriate, and I think a better guide for the Nation in its goal for energy independence to have a legislatively established limit which would permit certainty or greater certainty in the marketplace, and also give greater certainty in decisionmaking processes for the conversion to coal from natural gas.

It would permit, I think, more reasonable decisions to be made in this conversion effort.

Mr. **Gramm**. Well, I would like to thank you for appearing before this subcommittee and for your leadership in this area.

I would like to thank all of you who have attended this hearing. As those of you in the audience can see, this is a very volatile, emotional issue, as of course it should be when you are talking about the rights of States and when you are talking about the allocation of literally billions of dollars.

I would like to note before going on to our next witness that our colleague on this subcommittee who sits on the left side is Representative Loeffler from San Antonio, who is also extremely interested in this important bill, but was unable to be with us given a prior commitment but expresses his thanks to Attorney General White for attending.

Our next witness is the Honorable William Rogers of Rogers and Wells in New York City.

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TATEMENT OF HON. WILLIAM P. ROGERS, OF ROGERS & WELLS

Mr. ROGERS. Mr. Chairman, members of the subcommittee, I ppreciate the opportunity to be here today. In view of the hour, I ill make my comments brief.

As has been demonstrated this morning by the witnesses, it is uite clear that the taxes that we are speaking about are politicaly popular in Montana and Wyoming because the taxes, as has een pointed out by the subcommittee, fall on the consumers of lectrical power in the midwestern and southern States, and they ave no voice in the Legislatures of Montana and Wyoming.

There has been some reference here this morning to large companies, even one reference to barracudas, and certainly some reference to large law firms.

I am very proud to be here this morning, because I don't feel I m representing big business. I am representing, in effect, the onsumer because, as has been pointed out by members of the ubcommittee, these taxes are passed through to consumers. It is retty clear in looking at the legislative history of this statute, in Montana, that there were several comments to the effect of: "Let's ock it to them. We don't have to pay for it."

Now, you may know our firm represents the utility companies nd others in the litigation in the Montana case. We are challengng the Montana tax on the grounds that it offends both the ommerce clause and the supremacy clause in the U.S. Constituion.

The opponents of the bills have suggested this morning that we hould be permitted to pursue our remedies in court. However, in peaking to the Montana Supreme Court, the State of Montana in ts brief argued that we should not be in court but rather should ddress our arguments to the Congress. I want to say that I think we have the right to pursue our remedies in court and, equally mportant, to pursue our efforts in Congress.

Congress is really much more important in that respect because t will take a long time to have this legislation decided. We are not ure, of course, how we will fare in the Montana courts, but we think we have a good chance in the Supreme Court of the United States.

Now, it has been mentioned, but I am not sure sufficiently emphasized, that 25 percent of the coal reserves of the United States are in the State of Montana and that 75 percent of that coal is owned by the Federal Government. I continue to read stories in the paper in Montana and other places that this tax is necessary to protect the State's rights. Well, actually this is a Federal right.

This was decided upon very early in our history. In 1920, there was an agreement between the State of Montana and the Federal Government that that is the way the coal would be owned. So when we are talking about the coal in Montana we are talking about Federal coal, coal that is owned by all of the people of the United States.

The revenues that are involved in this case are enormous. Because the ad valorem tax is based on escalating coal prices, we estimate between now and the end of the century, if these taxes should be permitted to continue, it will result in several billions of dollars that the citizens of the rest of the United States will have to pay to the States of Montana and Wyoming.

The second point I want to emphasize is that the impact costs from coal mining to Western States can be met and are being met with relatively modest tax revenues. Reclamation too is a legitimate expense, but stringent State laws already require reclamation by the sellers of the coal and provide adequate protection for the States to see that it is done. So there is plenty of legislation providing that the impact of coal mining will be covered from other revenues so the severance tax is over and above those other revenues.

In addition to the severance taxes, the State of Montana imposes a variety of other taxes to cover impacts. Montana, for example, imposes property taxes on gross proceeds of mining which amount to 4¼ percent of the value of annual mining output, plus property taxes of the 11 percent of the market value of the mining equipment; plus a resource indemnity tax of one-half percent of mine proceeds each year, and the usual array of income and other taxes to which corporations are normally subject.

We have made a very extensive study of the costs to Montana of mining coal in Montana. We are prepared to show, with a carefully done study, that the total governmental costs associated with coal mining in Montana—and I am speaking of schools, roads, police, health protection, environmental protection, and the like—may amount to approximately 2 cents per ton.

The approximately 2 cents per ton tax would cover all of those costs whereas the severance tax amounts to 195 cents or $1.95. That is a difference between 2 cents a ton and $1.95 a ton.

Now, that is all gravy to the State of Montana. There is no doubt about when you read the legislative history of the statute in Montana that the legislature there just decided because of the national energy crisis that they will do exactly what the OPEC nations have done, and they would up the tax to 30 percent, which is almost double any other State, and no one can seriously claim that they need this money for any present purposes.

In fact, 50 percent of it is being set aside in the trust fund for the future. That means in effect that the present generation of people in Michigan and Illinois and Minnesota and Texas are paying in order to provide a trust fund for future generations of Montanans. And it is mostly Federal coal. It is coal that is owned by everybody. There is no reason for it and it is interesting that there is a good deal of discussion now in Montana about reducing it. I read the papers, and there are a lot of thoughtful people saying, well, we really are way out ahead. We shouldn't have asked for so much.

Certainly 12½ percent, as Congress is thinking about doing now, is reasonable. It more than takes care of any needs that any State could have, and it does not exclude other taxes. No one is suggesting this has to be the only tax. There are all the other taxes that the State provides for.

Even the Governor, when he was here and testified, was asked by Senator Bumpers if he didn't think that the 50 percent of the Federal royalties under the 1920 act were more than sufficient to cover any and all impact, and the Governor said, "I would say so, yes, sir, Senator."

So we are not talking about taxes that cover legitimate needs or the legitimate impact of mining coal in Montana and Wyoming. We are talking about excessive taxes that are really gouging consumers in the other States.

If you look back at our history, you will find that one of the things we did when we developed a Union was to be sure some States couldn't take advantage of other States. This is particularly true here, when most of the coal is Federal coal. That was the deal between the United States and Montana, that it was going to be Federal coal.

Now, also, other taxes, as has been pointed out, in Montana have been reduced lately because the severance tax is a real bonanza. It is going to be a tremendous bonanza in the future. Montana took the position that there was no limit to the severance tax they could impose. In the brief in the court, they said they could impose a 100-percent tax on this coal. I was pleased to hear Senator Baucus say this morning that he would be helpful in trying to restrain further taxes. But there is no guarantee of that.

How can utilities make any plans or how can they project their expenses in the future if there is no limit to the taxes that can be imposed by a State?

Some reference was made to the fact there might be some doubt about the power of Congress to enact this legislation. Let me say, Mr. Chairman, that Congress has ample authority to pass this kind of legislation. We have done research on that and would be glad to submit a statement to the committee to that effect, if you are interested, but I don't think there is any doubt about it at all.

Almost all of this coal goes into interstate commerce, and the tax is imposed after it is mined and washed and before it is put on the freight cars, so that there is no doubt in my mind that these taxes affect interstate commerce and there is no doubt in my mind that these taxes run directly counter to the national energy policy.

The national energy policy is to encourage the use of coal. Now, these taxes obstruct that policy, clearly obstructs it. This 12½-percent limitation I think would be reasonable from the standpoint of the Nation and it certainly would be reasonable from the standpoint of Montana and Wyoming.

Well, in conclusion, let me say that in a time of nationwide energy crisis, Montana has imposed its severance tax of 30 percent, almost twice that of any other State. I believe that Congress has a special responsibility in this area because of its role as a trustee of the people. It has a duty in my view of, a fiduciary duty, to see that no State takes unfair advantage of consumers in other States.

Montana and Wyoming cannot show any legitimate need for the enormous revenues that are being generated and, more importantly, that will be generated in the years ahead by these severance taxes. While there are certainly legitimate costs, those are covered by a range of existing taxes and grants.

Huge severance taxes bear no fair relationship to the costs which might be incurred by the States in connection with mining activities. Excessive taxes are now being set aside for future generations in Montana. These taxes are being paid for by the present generation of consumers in Detroit, Chicago, Minneapolis, Austin, and so forth.

Consumers are being gouged to get the coal that for the most part belongs to them. Obviously, this is unfair and unwarranted

Congress, as trustee for all the people in the Nation, should act to correct it.

For all of these reasons I strongly urge this subcommittee to give favorable consideration to H.R. 6625 and H.R. 6654.

Thank you very much.

[Testimony resumes on p. 110.]

[Mr. Rogers' prepared statement follows:]

TESTIMONY OF WILLIAM P. ROGERS

MR. CHAIRMAN: I am pleased to appear before the Sub-Committee in support of House Resolutions 6625 and 6654.

This legislation is important for the country. It gives this Committee, and the Congress, an opportunity to use an important federally-owned resource in a way which benefits the consumers of the entire nation.

The legislation applies to coal destined for shipment in interstate commerce and provides that the total burden of state and local severance taxes on that coal will not be permitted to exceed 12-1/2% of the value of the coal at the mine.

It is necessary because certain states - primarily Montana and Wyoming - have adopted excessive rates of tax: in the case of Montana, 30% of value and, in the case of Wyoming, approximately 17%. Both of these states have enormous reserves of low sulphur coal. Their taxes take advantage of recent market pressures, largely generated by previous federal legislation, which encourages or requires utilities and other large consumers to use coal, and particularly low sulphur coal. These states, recognizing this opportunity, have begun to use severances taxes to shift enormous tax burdens onto the citizens of other states. Under provisions in long-term coal purchase agreements and in electric utility tariffs, these taxes are passed through to consumers. The taxes obviously are politically popular in Montana and Wyoming because it is widely recognized that the ultimate burden of taxes falls on non-residents - ultimately the consumers of electrical power in mid-western and southern states - who do not have a voice in the legislatures of those states. In our view, these taxes represent an example of exploitation and profiteering from the energy crisis and the need of this nation to shift to greater use of coal.

My firm is representing a group of utility companies and others in litigation challenging the Montana tax in the Montana State Courts on the grounds that the tax offends both the Commerce Clause and the Supremacy Clause of the United States Constitution.

The opponents of this Bill will probably argue that we should be left to pursue our remedies in court. However, in speaking to the Montana Supreme Court, the State of Montana in its brief argued that we should not be in court, but should address our arguments to the Congress. We are of the view that we have rights and remedies which it is appropriate to pursue in court and, at the same time, a different set of rights and arguments which it is appropriate to pursue here.

This Committee, and the federal government generally, have a special responsibility here because as much as 75% of the coal reserves in Montana and Wyoming are owned by the Federal Government. Those reserves were originally acquired as part of the Louisiana Purchase. For many years a debate raged whether the federally-owned coal should be turned over to the states. As part of a compromise between the western states and the nation, Congress settled this issue by adopting the Mineral Lands Leasing Act in 1920. That

Act ended the long debate and determined that mineral resources in the western states would be retained by the nation. The federal government was given the responsibility to grant leasing rights. The Act provided, however, that revenues from leasing would be split between the federal government and the states in a fixed proportion. Those proportions were adjusted as recently as 1976. Thus, for the most part, the coal in Montana and Wyoming does not belong to those states. It is federal property and owned by the people of the United States.

Quite apart from the fact that these new taxes attempt to renege on the 1920 compromise, we believe that the excessive taxes imposed by these states are wholly unjustified. At a time this Committee - and every other Committee in Congress - is attempting to find ways to reduce inflation and to fill the energy gap, no state should be permitted to add on 30% or 17% to the already spiraling price of a commodity which is already owned by the federal government and desparately needed by the people of this country.

The revenues involved are enormous. Montana recently published figures to the effect that $59 mill'on will be collected in severance taxes during the current fiscal year, but this is just the tip of the iceberg. The taxes are ad valorem taxes and are based on escalating coal prices. If the nation is to meet its energy needs, production of coal for Montana and Wyoming must rise enormously by the end of this centruy. Seen in this light, we have projected that several billion dollars will be paid to Montana alone between now and the end of the century if the 30% tax remains in effect.

It is also clear that Montana and Wyoming have no need for, nor can they justify, these excessive revenues.

I wish to emphasize that public and private utilities have long recognized their responsibility to meet the legitimate needs of the communities in which they purchase coal and to pay their fair share of costs which come about because of their activities, but that is not what is involved in this instance. The impact costs from coal mining to western states can be met - and are being met - with relatively modest tax revenues. Reclamation, too, is a legitimate expense, but stringent state laws already require reclamation by the sellers of the coal and provide adequate protection for the states to see that that is done.

In addition to severance taxes, the states impose a variety of other taxes to cover impacts. Montana, for instance, imposes property taxes on gross proceeds of mining which amount to about 4-1/2% of the value of annual mine output; property taxes of 11% of the market value of mining equipment, a resource indemnity tax of 1/2 of 1% of mine proceeds each year and the usual array of income and other taxes to which corporations are normally subject.

The Federal Government, as well, has already taken ample steps to assure that the legitimate needs will be taken care of. As I mentioned before, most of the coal involved is already owned by the Federal Government. Under the 1920 Mineral Lands Leasing Act, the Federal Government agreed to share this wealth with the states in which the minerals were located. Today, after a recent amendment to that Act in 1976, fifty percent of these Federal revenues are directly returned to the states and an additional forty percent of these Federal revenues are returned to the states indirectly through reclamation programs of the Federal Government.

Some think that this Federal bounty is enough. This Committee should be aware of the fact that even Governor Judge of Montana once held that view. In 1977, he appeared before a Senate Subcommittee. Senator Bumpers put this question to him directly:

> ...it occurs to me Wyoming and Montana, with 50 percent of the royalties, would be loaning money to Saudi Arabia in 10 or 15 years. If I am correctly informed as to the coal reserves in those States.

My question is, don't you think that is a sufficient amount to cover all and any of the impact that is going to occur in the Western States?

Governor JUDGE. I would say so, yes, sir, Senator.

Additionally, Congress has made impact aid relating to energy development available under the 1978 Energy Acts. This is fitting since it is national policy - implemented in many acts of Congress concerning clean air and energy - which is pushing electric utilities into expanded use of and reliance on coal.

What we are taking about here is something more than coverning legitimate impacts. There is a wide disparity between the burdens of the tax and the costs imposed on the state, even taking account of all the legitimate needs and all the other sources of revenue.

The severance tax revenues come on top of these other sources of revenue. The simple fact is that they are not needed for any legitimate reason. Let me give you a few examples which will show that even Montana recognizes this.

(i) Montana now sets aside fifty percent of the Coal Tax revenues - literally tens of millions of dollars annually - in a constitutional trust fund for the purported benefit of future generations of

Montana citizens. The trust funds are accumulated, one should remember, from additions to electric bills of consumers in the Midwest and Southern States. Depositing the revenues in a trust fund is an express admission that there is no current needs for these funds.

(ii) Our studies indicate that tax rates in the counties directly affected by new coal mines have declined, not risen, since the onset of substantial mining activities in Montana. These communities have not been negatively impacted; to the contrary, they have profited from new sources of revenue to the extent that they have been able to reduce existing tax levels.

(iii) During its last session, the Montana Legislature adopted substantial reductions in property taxes and State income taxes precisely becuase large revenues were made available from coal severance taxes paid by the citizens of other states.

All of these points, taken together, show a direct recognition that revenues from the Coal Tax are unnecessary to meet any current needs.

Furthermore, under our present estimates, the reserves of coal in the Powder River Region of Montana and Wyoming alone will last for a period of more than a hundred years.

In closing, I want to make a few remarks concerning the relationship between the litigation presently being pursued in the Montana Courts and the Bill before this Committee. That litigation is absolutely no substitute for action by the Congress. It addresses the constitutionality of one particular tax in one particular state. While it involves a fundamental and important issue of constitutional law and while it is important to our clients - they currently have some 87 million dollars of protested tax payments at stake - it does not and cannot address questions which should be answered by Congress. Though I firmly believe that the Montana Tax is unconstitutional, and that it will eventually be so determined by the courts, this country should not wait for that decision and for the potential ripple effect it may have on the laws and policies of other states. Those other states are watching both the Courts.

and Congress to see whether to follow Montana's lead. Congress can settle this issue promptly. It should act promptly to enact the legislation that is before you by placing a limit on the level of state taxes on coal.

Further, the uncertainty which is created by the ability of states to impose large severance taxes has a detrimental effect on the ability of utility companies and other large consumers of energy to plan for the future. Our clients have had one unfortunate experience. They entered into long-term, 25 and 30 year, contracts to purchase coal. After such contracts were in effect the Montana Tax was enacted. This will happen again, either in Montana or in other states, unless Congress acts.

I should point out here that there is no doubt that the Congress has the power to enact the legislation that is before you. The Congress has ample authority under the Commerce Clause to limit or prohibit state taxation affecting interstate commerce. The Congress has done so on a number of occasions; and in the instances where such action has been challenged it has been uniformly upheld as constitutional by the courts.

* * *

At a time of nationwide energy crisis, Montana imposed its 30% severance tax on all coal mined in the state and Wyoming has imposed an aggregate of taxes amounting to about 17%. Most of the coal is owned by the federal government. Congress has a special responsibility in this area because of its role as a trustee for the people. It has a duty - in my view a fiduciary duty - to see that no state takes unfair advantage of consumers in other states.

Montana and Wyoming cannot show any legitimate need for the enormous revenues that are being generated and, more importantly, that will be generated in the years ahead by their severance taxes.

While there are certainly legitimate costs, these are covered by a range of existing taxes and grants. Huge severance taxes bear no fair relationship to the costs which might be incurred by the states in connection with mining activities. Excessive taxes are now being set aside for future generations in Montana. These taxes are being paid for presently by consumers in Detroit, Chicago, Minneapolis and Austin, Texas, etc. Consumers are being gouged to get coal that for the most part belongs to them. Obviously, this is unfair and and unwarranted. Congress, as trustee for all the people in the nation, should act to correct it. For all these reasons, we strongly urge this Committee to give favorable consideration to HR 6625 and 6654.

I am pleased that I have had the opportunity to appear before you, Mr. Chairman. If I can answer any questions, I will be happy to do so.

Mr. **Sharp** [presiding]. I wonder if you could make available for the record information to indicate the authority Congress has to impose a limit on taxes that you have in this matter.

Mr. **Rogers.** I think Montana is one of the nicest States in the Union. I like it very much, and I am not against Montana and not against the people in Montana, but I think they have gone too far, and down deep inside they know it, too.

Thank you very much.

[Testimony resumes on p. 120.]

[The following information was received for the record:]

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May 29, 1980

The Honorable John D. Dingell
2221 Rayburn Building
Washington, D.C. 20515

Dear Chairman Dingell:

In the course of the testimony before your subcommittee of Mr. William Rogers on March 21, 1980, Congressman Sharp asked that Mr. Rogers submit to the subcommittee an analysis of authority and precedent for the congressional limitation on state severance taxes contemplated by H.R. 6625 and H.R. 6654. Pursuant to Congressman Sharp's request, I have enclosed a memorandum setting forth that analysis.

I should note in this regard, that in its recent brief to the Supreme Court of Montana in the case of Commonwealth Edison et al. v. State of Montana (involving the issue of the constitutionality of Montana's coal severance tax) the State of Montana effectively conceded that the Congress has the requisite authority to enact this legislation and in fact contended that Congressional consideration of this issue is appropriate in lieu of consideration by the courts. Pages 47-8 of the brief, which reflect these comments, as well as the cover page of the brief, are enclosed for your information.

Sincerely,

Anthony Essaye

Anthony F. Essaye

Enclosures

MEMORANDUM ON THE AUTHORITY AND PRECEDENT FOR A CONGRESSIONAL LIMITATION ON STATE SEVERANCE TAXES ON COAL

Article I, Section 8 of the Constitution gives Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes. . . ." It has long been settled that this power gives Congress wide-ranging authority to regulate all activities which affect interstate commerce. In the landmark Supreme Court case of NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1936), Mr. Chief Justice Hughes wrote that under Article I, Section 8,

> [t]he fundamental principle is that [Congress']. . .power to regulate commerce is the power to enact "all appropriate legislation" for "its protection and advancement" . . . .That power is plenary and may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten it."

301 U.S. at 36-37 (citations omitted). Moreover, Mr. Justice Hughes pointed out that Congress' power under the Commerce Clause extends to all activities which "have such a close and substantial relationship to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions." 301 U.S. at 37. And if Congress chooses to act under the Commerce Clause, it "cannot be denied the power to exercise that control." Id.

Further, there can be no doubt that the power of Congress under the Commerce Clause includes the authority to limit or prohibit state taxation affecting interstate commerce. For more than a hundred years, Congress has exercised such authority, and its exercise of that power consistently has been upheld by the courts. For example, in 1871 Congress enacted a law prohibiting any state from levying pilot charges on steamships required by federal law to carry federally licensed pilots, a law which is now codified at 46 U.S.C. §215. This statute's preclusion of such state charges was upheld by the Supreme Court almost a century ago. Spraigue v. Thompson, 118 U.S. 90, 96 (1885).

In another sphere, Congress has acted to prohibit states from imposing any net income taxes on persons who do not possess certain minimum contacts with the taxing state. 15 U.S.C. § 382. The power of Congress to prohibit such state taxation was upheld in three separate court challenges to this statute. See, International Shoe Co. v. Cocreham, 246 La. 244, 164 So.2d 314, cert. denied, sub nom. Mouton v. International Shoe Co., 370 U.S. 902 (1964); State v. State Tax Commissión, 382 S.W. 2d 645 (Mo. 1964); Smith, Klein & French Laboratories v. State Tax Commission, 241 Or. 50, 403 P.2d 375 (1965). In one of those actions, International Shoe Co. v. Cocreham, the Supreme Court of Louisiana, after reviewing the United States Supreme Court's decisions in this area, concluded:

> Of the many matters presented to the Supreme Court concerning the unconstitutionality of state taxation of activities in interstate commerce, there is none in which the Court has ever suggested that Congress has not retained plenary power to regulate the activity by prohibiting the imposition of a state tax when it determines such tax to unduly burden the free flow of such commerce.

164 So.2d at 319.

Two more recent occasions on which Congress has acted to prohibit state taxation are especially worthy of note in the present context. In both instances, Congress determined that certain state taxation would impede the effectuation of national policy and acted to prohibit such taxation in order to ensure the effectiveness of its policy. In 1973, Congress enacted the Airport Development Acceleration Act, Pub. L. No. 93-44, which was designed to encourage the growth of air transportation in the United States. As a part of this federal program, a flat prohibition was placed on the imposition by any state of taxes, fees, or head charges on persons traveling in air commerce; this prohibition was imposed as a consequence of a Congressional finding that such charges "inhibit the growth of the air transportation system. . . ." S. Rep. No. 93-12, (1973), reprinted in 1973 U.S. Code Cong. & Admin. News p. 1451. Shortly after the statute's enactment, the Supreme Court of Pennsylvania struck down that state's head tax on air travellers, saying that the Airport Development Acceleration Act,

> . . . enacted pursuant to Congress' constitutional authority to regulate interstate commerce, has undeniably pre-empted any state, or local, intervention in the field of airport head taxes. . . . The Act renders constitutionally invalid and impermissible existing state or local head taxes.

Allegheny Airlines Inc. v. Philadelphia, 453 Pa. 181, 309 A. 2d 157, 159 (1973).

Even more recently, Congress passed the Securities Acts Amendments of 1975, Pub. L. No. 94-29, which contain a prohibition on the imposition by a state of taxes on certain transfers of shares of stock made through a registered agent with facilities located in the state. This statute is codified at 15 U.S.C. § 78bb(d). In its report on this legislation the Senate Banking, Housing and Urban Affairs Committee noted that it had received testimony during hearings "that the imposition of state transfer taxes may be impeding the development of a national system of processing securities transactions." S. Rep. No. 94-75, p. 60 (1975). The Committee concluded that

> [P]rohibition of state transfer taxes which . . . impede such development is clearly in the public interest . . . .
> This provision is designed to facilitate the development of a national system for handling securities transactions . . . .

Id. Like the other examples of legislation already discussed, the constitutionality of this prohibition is beyond question. Cf.

Boston Stock Exchange v. State Tax Commission, 429 U.S. 318, 321 n. 4 (1977).

Thus, Congress has acted in the past to prohibit states from imposing taxes or fees in such different areas of interstate commerce as steamship pilotage, air travel, and securities, and Congress has been consistently upheld by the courts in the exercise of its power to do so. While such legislation has prohibited state taxation, the power of Congress to limit state taxation is certainly implicit in its prohibition power.

Like the examples of legislation discussed above, H.R. 6625 and H.R. 6654 address state taxation in the context of a broad legislative concern, in this instance the effectuation of the nation's energy policy. As this Committee knows, Congress has over the past five years enacted a series of statutes designed to encourage the nation's use of coal as a substitute for scarcer and more expensive fuels. The statement of purpose contained in the Fuel Use Act of 1978, which these bills would amend, is representative of this legislative program:

> The purpose of this Act . . . [is] to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum, as a primary energy source.

Under such circumstances, there is ample precedent for the Congressional limitation on state severance taxes on coal contained in these bills. Congress' power to enact such legislation is clear, and the contribution such a prohibition would make to the effectuation of our national energy program makes passage of this legislation especially appropriate.

May 30, 1980

IN THE SUPREME COURT OF THE STATE OF MONTANA

CAUSE NO. 14982

COMMONWEALTH EDISON COMPANY
CENTRAL ILLINOIS LIGHT COMPANY,
DAIRYLAND POWER COOPERATIVE,
DETROIT EDISON COMPANY, INTERSTATE
POWER COMPANY, LAKE SUPERIOR
DISTRICT POWER COMPANY, LOWER
COLORADO RIVER AUTHORITY/CITY OF AUSTIN,
MINNESOTA POWER & LIGHT COMPANY,
NORTHERN STATES POWER COMPANY, UPPER
PENINSULA GENERATING COMPANY,
WISCONSIN POWER AND LIGHT COMPANY,
DECKER COAL COMPANY, PEABODY COAL
COMPANY, AND WESTMORELAND RESOURCES,
INC.

Plaintiffs and Appellants

-vs-

STATE OF MONTANA, THOMAS L. JUDGE,
GOVERNOR OF MONTANA, RAY DORE,
DIRECTOR OF THE STATE DEPARTMENT
OF REVENUE, and VERA S. FRESEMAN,
STATE TREASURER,

Defendants and Respondents

RESPONDENT'S BRIEF

APPEARANCES:

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This is not to suggest, however, that taxpayers who feel aggrieved by the rate of a state tax affecting interstate commerce are without a remedy. While a court is an inappropriate forum for determining the rate of a tax, a legislative body is fully capable of making such a determination. In the context of the present controversy, it is the United States Congress that is charged with the explicit grant of the Commerce Clause power "to regulate Commerce. . . among the several States."

Congress is presently focusing abundant attention on national energy policy in general and on the very issues that divide the parties here. The taxpayers' brief is replete with indications of congressional concern with our nation's coal resources. Moreover, legislation has recently been introduced in Congress directed specifically to the problem that the taxpayers seek to have this Court resolve. S.1778, a bill introduced by Senator Bentsen in September 1979, "to limit State severance taxes on energy resources produced from certain Federal lands," provides:

> That, notwithstanding any other provision of law, with respect to coal, oil, natural gas, oil shale, or other energy resources mined or produced from Indian lands or lands owned by the United States, the sum of all taxes or fees levied or collected by a State or within a State on such energy resources or on any improvements or other rights, property, or assets produced, owned, or utilized in connection with the production of such energy resources, shall not exceed a total of 12-1/2 per centum of the value of such resources at the time they have been extracted and prepared for transportation free on board the production site, exclusive of all State and local taxes and fees, unless such taxes or fees collected with the State are fairly related to services (1) provided by said State or its local authorities in connection with the production of such resources and (2) for which the royalties under section 35 of the Mineral Leasing Act of 1920 do not provide adequate compensation.

The State does not concede, of course, that such legislation is advisable or that, even if it were enacted, it would necessarily affect the outcome of this litigation. The point is simply that Congress is fully aware of and involved in the conflict that Congress is capable of resolving.

Under all of these circumstances, institutional considerations plainly counsel judicial restraint and provide additional grounds for dismissing the taxpayers' Commerce Clause Claim.

Mr. **Sharp**. Thank you very much. We appreciate your testimony.

We have one final panel today.

We have Mr. Walter McCarthy, president of the Detroit Edison Co., and Mr. Hubert Nexon, senior vice president, Commonwealth Edison of Chicago, Ill.

Gentlemen, welcome, and we will of course make any of your material part of the record and we welcome your verbal summary, if you wish.

Mr. McCarthy, Mr. Nexon, go right ahead.

STATEMENTS OF HUBERT NEXON, SENIOR VICE PRESIDENT, COMMONWEALTH EDISON; AND WALTER J. McCARTHY, JR., PRESIDENT, DETROIT EDISON CO.

Mr. **Nexon**. Thank you, Mr. Chairman, and members of the subcommittee. I want to thank you for the opportunity to appear before you. Of course, we welcome consideration of the legislation discussed here this morning.

I am Hubert Nexon. I am senior vice president of Commonwealth Edison Co., which serves Chicago and northern Illinois. That company is one of the largest electric utility operating companies in the country.

Despite its heavy commitment to nuclear power with which it generated about 40 percent of its 1979 output, it nevertheless uses huge amounts of coal. Last year we received about 4 million tons of low sulfur coal from Montana and 10 million tons from Wyoming.

Our dependence on these fuel sources explains our interest in H.R. 6625, introduced by Congressman Philip Sharp of Indiana, and H.R. 6654, introduced by Congressman Sam Devine of Ohio.

I am also serving as president of the National Coal Consumers Alliance, which has the support of a number of other utilities similarly situated and of an expanding steering committee, consisting of representatives of the public in states which use large quantities of western coal.

The chairman of the steering committee is the Honorable Donald Fraser, the mayor of Minneapolis, and among its members are Lt. Gov. Terry Branstad of Iowa, Lt. Gov. Lew Wangberg of Minnesota, Attorney General Warren Spannus of Minnesota, Attorney General Mark White of Texas, Mayor Coleman Young of Detroit, Mich., Mayor Lila Cockrell of San Antonio, Tex., Mayor Carol McClellan of Austin, Texas, Mayor Robert McGaw of Rockford, Ill., and Douglas Fraser, president of the United Auto Workers.

Numerous other public figures, national associations, public and private utilities, labor unions and consumer groups are actively working with the NCCA to reduce excessive coal severance taxes.

This group is growing daily and includes American Public Power Association, the National Rural Electric Cooperative Assocation, the United Auto Workers, the Association of Louisiana Electric Cooperatives, and Cajun Electric Power Cooperative.

By no means is our support confined to a narrow base of investor-owned utilities.

The heavy resort to low sulfur coal is the product of the new State and Federal environmental requirements which began developing around 1970.

Regulations which limited sulfur oxide emissions from utility stacks compelled us to purchase large quantities of low sulfur coal in a very short period of time.

The low sulfur coal resources most readily available to utilities in the Middle West and Southwest were those in the Great Plains, principally Montana and Wyoming. These two States account for about 40 percent of the Nation's total coal reserves and two-thirds or more of the U.S. coal reserves with less than 1 percent sulfur.

The result has been an enormous expansion of output both in Montana and Wyoming. Montana's coal output in 1969 was a little over 1.3 million tons; in 1979 its output was nearly 33 million tons. In 1969 Wyoming's output was 4.6 million tons; in 1979 that figure was about 75 million tons.

With such a commanding market position, these States are in a position to exact a tremendous toll from the purchasing utilities and their customers. And they have. Montana levies a severance tax at the rate of 30 percent of the value of coal ready for shipment; Wyoming levies severance and similar taxes of about 17 percent.

These heavy burdens on the coal purchased by utilities are reflected directly in the price the utilities must pay and are necessarily collected by them in their turn from their customers.

The effect is, therefore, to export a large portion of the tax burden of those two States and to transfer it from the citizens of those States to the citizens of Illinois, Texas, Michigan, Indiana, Wisconsin, and Minnesota, to name a few of the States affected.

One of the Montana representatives was asked why property taxes had been reduced in some of the counties where the coal mining was going on. He answered that was the impact of proposition 13.

No reaction by the citizens of our States to proposition 13 can have any effect, unfortunately, on the Legislature of Montana.

The impact of the exported taxes on Commonwealth Edison Co. is large both absolutely and relatively. The severance tax applicable to the 4 million tons we bought from Montana cost us about $14 million in 1979, or about $3.50 a ton, a higher figure than any that has been mentioned to you earlier this morning.

The Wyoming severance and similar taxes amounted to $27 million, averaging $2.50 a ton. As prices rise, so will the tax amounts.

These huge amounts constitute an important part of our total fuel bill and our fuel bill in turn constitutes a very large part of our operating revenues. Our 1979 operating revenues were just over $2.7 billion. Notwithstanding the help provided by low nuclear fuel costs, our bill for fuel alone was $963 million.

In 1969, the cost of fuel accounted for about 17 percent of our revenues. In 1979, although our average price per kilowatt-hour was about 2½ times the 1969 level, the cost of fuel was over 35 percent of that much higher figure. Clearly it is one of the utmost importance to us and our customers that every effort be made to limit fuel costs.

A public utility is, of course, entitled to collect from its customers all costs prudently incurred. In the case of fuel costs, almost all utilities, including those which are NCAA's members and supporters, are allowed to adjust their rates automatically, under so-called fuel adjustment clauses, to reflect changes in the cost of fuel.

Accordingly, what we are forced to pay through such levies as the Montana and Wyoming taxes turns up quite promptly in the bills we render to our customers. Of course, a limitation of severance and similar taxes will also be reflected in the bills we render to our customers.

As a practical matter, the utilities are essentially conduits through which severance taxes are collected by the mining States from our customers.

It is perhaps fair to ask, therefore, why the utilities are so concerned about the tax burden. The reasons are these.

First, a concomitant of our right to collect our fuel costs through our bills is the responsibility to keep those costs as low as reasonably possible. Our appearance here today is in discharge of that responsibility.

Second, we all recognize the serious impact that rising utility rates have on all of our customers, whether they are poor inner-city dwellers or large industries which are important to the prosperity of our service territories.

That concern moves us to do everything we can to minimize our total charges. That concern applies to transportation costs just as much as it does to the taxes examined here. But we cannot neglect the problems raised by these taxes while we are dealing with the transportation cost problem as well.

We concur in the views expressed by other witnesses that presently excessive levies on western coal and the prospect that, unchecked, they may rise still further are in conflict with the national interest in promoting the use of coal as a substitute for scarce imported fuels.

We also believe that using control of a critical national resource, the greater portion of which is owned by the United States, to transfer tax burdens from producing States to consuming States is or ought to be regarded as contrary to national policy.

In our federal system, some States ought not to be allowed deliberately to exploit others. Congress is the ultimate arbiter of such conflicts between State and National interest.

We urge upon this subcommittee the view that H.R. 6625 and H.R. 6654 offer a proper resolution of the conflict evident here, giving the producing States reasonable treatment and protecting the consuming States against unreasonable exactions.

Thank you very much, Mr. Chairman.

Mr. SHARP. Thank you, Mr. Nexon.

Mr. McCarthy?

STATEMENT OF WALTER J. McCARTHY, JR.

Mr. McCARTHY. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here today.

I am Walter J. McCarthy, Jr. I am president of the Detroit Edison Co.

Detroit Edison provides electric power to over 5.3 million people in a 7,600-square-mile urban and rural area in southeastern Michigan.

Over one-half of Michigan's population and electricity consumption is in Detroit Edison's service area. The major part of Michigan's industrial, activity is located there as well.

An interesting thing about Michigan is that about 96 percent of the energy used within the State for residential, industrial, and commercial uses as well as all other uses has to be imported from without the State.

Detroit Edison uses coal to generate about 85 percent of the kilowatt-hours we provide. As such, we are one of the largest coal users in the world.

In 1972 we initiated a comprehensive review of our coal buying policies, due to a confluence of two factors—the emerging national policy to stimulate and encourage production of coal to reduce our excessive national dependence on oil, and the need to burn low sulfur coal to satisfy environmental concerns with respect to air quality improvement.

Based on that review, we made a number of innovative decisions. In 1973 we contracted with the Decker Coal Co. of Montana for 200 million tons of low sulfur coal to be purchased over a 26-year period starting in 1976.

At the same time we proceeded to set up a vast and complex transportation system for delivering that coal all the way, about 1,700 miles, to Michigan.

The whole purpose of that review, which was a very extensive engineering review of many, many alternatives, was to reduce the cost of electricity to our customers while, at the same time, providing them with a reliable supply of electricity.

Our being here today is an extension of that purpose which was the origin of getting into the western coal business in the first place.

To carry the coal from the Decker mines in Montana, unit trains, which are permanently coupled hundred car trains that run as complete units and are not separately switched, were acquired to take the coal almost 1,100 miles to Superior, Wis., and deposit it there at a large transshipment facility, built to store up to 20 million tons of coal per year.

Long-term commitments were made for transportation services by lake freighters to take the coal the balance of the distance, about 700 miles, through Lake Superior, beyond the southern end of Lake Huron, to our St. Clair powerplant, and also to the Belle River powerplant, which is presently under construction.

Many of the units at the St. Clair plant were converted to accommodate western low sulfur coal at a cost of about $280 million. The Belle River plant which is being constructed to burn such coal is estimated to cost approximately $1.3 billion.

These figures include a second coal storage facility which can hold 3 million tons of coal as well as special docking facilities built on the St. Clair River.

As a result of this sizable commitment, we are obviously locked into Montana coal. In 1973, when the coal contract was executed, the Montana coal severance tax was fixed at a rate of 10 cents per ton. But in 1975 that tax was jumped to 30 percent of the selling price.

Today, at that 30-percent rate, the tax on our coal is about $2.54 a ton, which is an increase of 2,400 percent.

Computing escalation and a rate of inflation until the end of the coal contract, the Montana coal severance tax will soar to over $14 a ton. By the end of the 26 years of the contract, if the present tax remains in effect, the consumers or the customers of Detroit Edison will pay over $1.3 billion in coal severance tax to the State of Montana.

Detroit Edison on behalf of its customers is deeply concerned about this matter because by 1985 Montana coal is expected to make up nearly 50 percent of the coal that we burn to generate electricity, up from less than one-quarter of our current generation.

Fuel costs currently make up approximately 40 percent of our customers' bills. As Mr. Nexon has indicated, all these fuel costs are directly passed on to Edison's customers, about 90 percent promptly within 3 months and the other 10 percent, in about a year or so.

I might add at this point one of the interesting things about the reclamation costs—and I want to make it clear that neither Detroit Edison nor I am sure its customers in the southeastern Michigan area are trying to end up with Montana being a devastated prairie due to the strip mining that has been done.

We, and I am sure our customers, too, believe very strongly that reclamation must be done to restore those properties, and a great deal of work has been done in that area.

I have visited the mines out there. We are doing an extraordinary job in reclaiming the mines after coal has been removed. The cost of that reclamation is in the cost to us, to which the 30 percent tax is applied.

So to a certain extent the more that we and the more that the mining companies do to effect a proper reclamation, the more tax that has to be paid. I think that is something that should be thought of and needs to be brought out.

Mr. **Sharp**. In other words, it is almost a double taxation for reclamation.

Mr. **McCarthy**. In a sense, it is. The more you do directly to reclaim, the higher the tax you pay, part of which presumably is related to reclamation.

I think this morning many things have been said, it has been brought out very clearly what I was going to say in the balance of my testimony—the need for coal, the national policy aspects of coal, the more or less contraindications that one gets when a high tax is placed on coal at a time when we certainly feel that coal use must be developed to the utmost.

We have heard some things this morning about the Btu aspects of the tax. One of the points that was brought out in a curve by Mr. Christiansen I think unwittingly is a bit misleading.

The curve was exhibit 1 of his testimony [see page 70], showing what is shown as the heat rate for coal, oil and gas. I think on looking into this curve—and of course I have not had a chance to do so in detail, but I have seen this kind of thing before—those are the average heat rates from powerplants burning coal, oil, or gas in the years which are shown on the curve.

That curve came from a McGraw-Hill publication, I believe.

Now, you can get from oil or gas a unit that will have the efficiency or the heat rate of a coal unit, if you want to. There is nothing inherent in oil or gas which prevents you from having a very efficient unit.

In the design of a powerplant, one optimizes economically, taking into account the number of hours per year of operation that the plant will be needed for, taking into account the loads they will be operated at, and it turns out that over the years power plants have been designed for coal as base load units, and have been designed as very efficient units.

So, this curve shows, as it certainly would, that coal plants on the average in the United States, which I believe that curve represents, are very efficient. They have heat rates down in the 10,000 or so area. Some of the other units it shows here are less efficient.

My belief is—and this will take some looking into, and we will be glad to submit later on some results of investigation—that the gas and oil numbers shown are there because that gas and oil was burned in units which were designed to be less efficient, possibly because they had very few hours of annual operation, or possibly because they are old units which were converted from coal to gas and oil.

Those of you who have looked into the question of a steam powerplant realize the tremendous balancing of fixed charges, which are increased or decreased by the amount of energy utilizing equipment you install in a plant, and operating costs, which are a function of the fuel itself.

So, I think this needs some looking into, and may not entirely present the picture that we think it was.

Mr. Greely in his testimony suggested that we ought to attack some other aspects of the cost of electricity to our customers. The numbers that have been given to the relatively small effect on our customers are about right.

We figure about $6 a year per customer is due to the severance tax, and those numbers were mostly confirmed in testimony this morning.

But the trouble with electricity costs is that they are made up of many small components; that electricity costs are a function of interest rates as they exist, because that affects how much fixed charges are needed to build a powerplant.

They are subject to salary levels in areas. They are subject to environmental improvement requirements. They are subject, of course, to fuel costs. The fuel costs can be looked at as the cost of the bulk material itself, the originating costs, and how much it costs to get to the place we are going to burn it.

We are paying attention to all of those things. Some of them in the present economy are impossible, apparently anyhow, to influence, like the interest rates that are being charged.

But the originating costs and the severance tax in this particular case are something that we feel strongly enough about so that for our customers we are here today. We also are working on the transportation costs, on that same area.

We have had considerable influence on the recent reduction in the rail coal rate. That was done, as well as this, for our customers in the long run.

So, we are paying attention to it, and we believe that the only way we are going to hold down electric prices is to keep an eye on all the components of those prices, to try and increase efficiency in the company, to try and increase the utilization of our capital investments, and to try and reduce the costs of things from the outside.

I am sorry I ran on there, but I just wanted to get those thoughts in.

Thank you very much.

[Mr. McCarthy's prepared statement follows:]

STATEMENT OF WALTER McCARTHY

I am Walter J. McCarthy, Jr. I am President of The Detroit Edison Company. Detroit Edison provides electric power to over 5,300,000 people in a 7,600 square mile urban and rural area in Southeastern Michigan. Over one-half of Michigan's population and electricity consumption is in Detroit Edison's service area. And the major part of Michigan's industrial activity is located there as well.

Detroit Edison uses coal to generate about 85% of the KW hours we provide. As such, we are one of the largest coal users in the world. In 1972, we initiated a comprehensive review of our coal buying policies due to a confluence of two factors: the emerging national policy to stimulate and encourage production of coal to reduce our excessive national dependence on oil, and the need to burn low sulfur coal to satisfy environmental concerns with respect to air quality improvement. Based on that review we made a number of innovative decisions. In 1973, we contracted with the Decker Coal Company of Montana for 200 million tons of low sulfur coal to be purchased over a 26-year period starting in 1976. At the same time we proceeded to set up a vast and complex transportation system for delivering that coal to Michigan. To carry the coal from the Decker mines in Montana, unit trains were acquired to take the coal almost 1,100 miles to Superior, Wisconsin and deposit it there at a large transshipment facility built to store up to 20 million tons per year of coal. Long term commitments were made for transportation services by lake freighters to take the coal about 700 miles through Lake Superior beyond the southern end of Lake Huron to the St. Clai Power Plant and the new Belle River Power Plant which is being built. The St. Clair plant was converted to accommodate western low sulfur coal at a cost of approximately $280 millio The new Belle River plant, which is being constructed to burn such coal, is estimated to cost approximately $1.3 billio These figures include a second coal storage facility which can hold 3 million tons of coal as well as special docking facilities built on the St. Clair River. As a result of this sizeable commitment, we are obviously locked into Montana coal.

In 1973, when the coal contract was executed, the Montana Coal Severance Tax was fixed at a rate of 10 cents per ton. Today the tax, at the rate of 30% of the selling price, is $2.54/ton, an increase of 2400%. Computing escalati and a rate of inflation until the end of the coal contract, the Montana Coal Severance Tax will soar to over $14.00/ton. By the end of the 26 years of the contract, if the present tax remains in effect, we shall pay over $1.3 billion in coal severance tax to the State of Montana.

Detroit Edison, on behalf of its customers, is deeply concerned about this matter because by 1985 Montana coal is expected to make up nearly 50% of the coal that we burn to generate electricity -- up from less than one-quarter of our current generation. Fuel costs currently make up approximately 40% of our customers' bills. As Mr. Nexon has indicated, almost all of these fuel costs are directly passed on to Edison's customers.

As you know, coal has emerged as the key in a comprehensive national energy program as the United States seeks a massive reduction of its dependence on foreign sources of energy. Only 8% of this country's total fossil fuel reserves are oil and gas, yet oil and gas, mostly imported, are used to meet 75% of this nation's energy needs. Nuclear power growth in the post-Three Mile Island era is at a virtual standstill, at least temporarily. Alternative energy sources, while contributing, are not sufficient to keep the economy running and employment maintained. It will be many years before alternate fuels can be used on a large scale. Coal, on the other hand, comprises 90% of the United States' fossil fuel reserves. The problem is that it is currently used to meet only 18% of our energy needs.

In the last decade, Congress passed three major laws which direct industrial and utility users of oil and gas to switch their consumption to coal. Another such bill will be pending before the Congress shortly.

A coal boom is being encouraged by the Administration. President Carter has stated that an integral part of the national energy plan is to "discourage higher coal prices that do not reflect real increases in the cost of producing and delivering coal supplies." The national scope of the energy problem demands that no state take advantage of the energy requirements of the nation to reap excessive profits for itself. Such action could only be divisive and inhibit the national drive for energy independence.

Unfortunately, this is precisely what the State of Montana has done with its 30% severance tax and the State of Wyoming with its 17% severance tax. The State of Montana has even set up a mineral trust fund to handle surplus revenues collected through the tax. In 1980, Montana's trust fund will receive double the amount it received in 1979 from the severance tax revenues. This suggests a level of revenue so far in excess of actual needs as to clearly evidence an effort by the State of Montana to reap windfall benefits from the nation's present energy predicament.

In summary, both the executive and legislative branches of the federal government have made the decision that the national energy policy of the United States requires a massive increase in coal production, and have long since begun to implement that policy. The states themselves should do no less.

Coal, this nation's most abundant and environmentally acceptable fossil energy resource, should be used in place of other fossil fuels wherever feasible. Programs that increase the use of coal should receive the highest priority. Programs that inhibit that goal, such as the Montana and Wyoming Coal Severance Taxes, should be measured against the need for a consistent national energy policy.

Detroit Edison has joined with other utilities in the litigation effort, previously referred to by Mr. William Rogers, in the Montana courts. We, however, feel that regardless of the outcome of the litigation it is imperative that Congress limit the amount that any state can tax consumers of other states for the privilege of sharing our nation's natural resources. We therefore have joined with other utilities, consumer groups and public officials from many states to support this legislative effort.

We fully support the legislation proposed by Representative Sharp and Representative Devine.

Mr. Sharp. Thank you very much, Mr. McCarthy.

Does the gentleman from Michigan have any questions?

Mr. Dingell. Mr. Chairman, I thank you.

Mr. McCarthy, I am also delighted to see you before the subcommittee. I am certainly pleased to welcome you here. I think you make a very good case. We thank you for your assistance to the subcommittee.

Mr. Sharp. Gentlemen, we thank you for your information. We appreciate the information. As we continue to consider this, we may be coming to you for additional information.

You indicated that you are examining that particular exhibit. If you would submit for us your assessment of that, we would appreciate that.

[The following information was received for the record:]

Assessment of U.S. Steam-Electric Utility Heat Rate Experience, 1960-70

We have reviewed Mr. Christiansen's Exhibit 1 [see p. 70] and compared the heat rates to plants on our system. Our conclusion is that the differences in heat rates between boilers utilizing the various fossil fuels are the result of life cycle cost optimization (including the conversion of older coal boilers to oil or gas to comply with environmental regulations). The only significant theoretical basis for differences in boiler efficiency between comparably equipped boilers is the amount of moisture in the stack gas. Chemically, gas and oil have a higher hydrogen content (which is converted to water upon combustion) than dry coal. Coal has no practical advantage, however, because as received and burned by utilities it is never dry. The Montana coal burned by Detroit Edison is much higher in moisture than coal received from eastern states.

Heat rate, as distinguished from boiler efficiency, can be largely influenced by planned features such as feedwater heaters, air preheaters, economizers and higher steam temperatures and pressures. These efficiency measures are very costly and can only be justified if they are offset by fuel savings. Most coal fired utility boilers were designed for base load operation and the higher capital cost of heat rate reduction could be recovered by reduced fuel costs during several thousand hours of annual operation. Many gas and oil fired plants were designed for more limited operation (or were designed during much lower regional gas/oil pricing regimes). The owners could not justify asking their customers to pay for expensive plant features which would offer no appreciable reduction in annual operating costs.

Another example of cost optimization which influences the heat rates of gas and oil boilers was the need to conform to emission regulations with older, lower efficency boilers. Since these units would be operated intermittently irrespective of fuel type the least costly compliance strategy was to switch to a clean fuel. Detroit Edison has several such installations with heat rates equal to or higher than those indicated on Mr. Christiansen's Exhibit 1. We also have a recently completed oil fired unit designed for intermediate load duty (daily cycling) which has a heat rate lower than indicated for coal fired boilers on that same exhibit.

In summary, there is no basis in theory nor in fact to state that "coal is the most efficient" of these fossil fuels. Mr. Christiansen's Exhibit 1 is not a comparison of "apples and apples" as the fruits of economic optimization do not necessarily come from the same tree.

Mr. Sharp. The subcommittee, as I understand it, does intend to have additional hearings on this matter. We will close out for today. Thank you very much.

[Whereupon, at 12:20 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

COAL SEVERANCE TAXES

THURSDAY, JUNE 5, 1980

House of Representatives,
Subcommittee on Energy and Power,
Committee on Interstate and Foreign Commerce,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2123, Rayburn House Office Building, Hon. John D. Dingell, chairman, presiding.

Mr. Dingell. The subcommittee will come to order.

This afternoon the subcommittee continues its hearings on a series of bills, H.R. 6625, H.R. 6654, and H.R. 7163, relating to the level of coal severance taxes.

The United States has the world's richest deposits of an important energy resource—coal. Our national coal reserves are more abundant than the oil reserves of the entire Middle East. As our domestic oil reserves are exhausted, coal must increasingly sustain our Nation's energy security and self-sufficiency. Conversion from oil to coal was a prime objective of the National Energy Act and is still a keystone of national energy policy.

But, despite our national goal of reducing oil imports by the increased use of coal, we find that the use of coal reserves is being impeded. We are told one of the reasons is that State coal severance taxes are restricting the use of coal. Montana, which has perhaps one-fourth of the Nation's coal reserves, for example, has imposed a tax of 30 percent. Other States have imposed lesser—but still significant—taxes.

These taxes seem designed to prevent the increased use of coal—something the subcommittee will want to consider at today's hearing. They are costs added to the price of producing electricity and consumer goods and they show up in inflated consumer utility bills and industrial operating expenses.

If some limitation is not imposed now, it is unlikely other coal-producing States will resist the temptation to exploit their coal in the same manner. These States already reap large benefits from coal production—coal producers pay the cost of reclaiming coal-producing land and the Federal Government provides substantial input aid to cover State costs related to coal production from Federal lands within these States.

These taxes seem to exceed any needs that States may have for compensation for their costs related to coal extraction. The cost of these severance taxes is borne principally by consumers in other States who have no voting voice in deciding the rates they must pay.

The bills, H.R. 6625 and H.R. 6654, and H.R. 7163, which the subcommittee is considering, would not eliminate State severance taxes but would limit them instead to a reasonable level. The 12.5-percent ceiling in both bills appears to be high enough to allow States to obtain compensation for costs of services they actually provide to support coal production and to add an additional increase to cover general welfare requirements.

This afternoon the subcommittee will hear a panel of distinguished witnesses representing both industry and the area in large part affected by the legislation in question.

Our first witness this afternoon is the distinguished Governor of the State of Wyoming, the Honorable Ed Herschler.

Governor, we are delighted you are our witness. If you would come forward to the witness table, we would be delighted to receive your testimony. Do you have anyone with you?

Governor **Herschler**. Mr. Chairman, if you don't mind, we have our congressional delegation from Wyoming present, too.

Mr. **Dingell**. They are well known and much respected here. I visited with both of them. Your two Senators have maintained a very visible interest in this matter, and Congressman Cheney has interested himself to such a degree that it has become painful.

Governor **Herschler**. I would like to bring them to the table with me, if you don't mind.

Mr. **Dingell**. If that is your wish, it is entirely appropriate.

Gentlemen, if you would come forward. I guess we will hear from Wyoming at this time. We will hear next from Representative Williams and Representative Towe.

Governor, we said we would hear you first. We will hear you first. We will let the other witnesses decide the order in which they wish to appear.

STATEMENTS OF HON. ED HERSCHLER, GOVERNOR OF THE STATE OF WYOMING; HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING; HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING; AND HON. RICHARD BRUCE CHENEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Governor **Herschler**. Thank you, Chairman Dingell, and members of the subcommittee.

I am here today to speak in opposition, if you will, to H.R. 6625 and H.R. 6654. I wasn't aware of the other bill. I assume it is somewhat similar.

Mr. Chairman, I have presented to the subcommittee a statement for the record, to you.

Mr. **Dingell**. Without objection, your full statement will appear in the record. [See p. 138.] We will recognize you for such comments as you choose to give.

Governor **Herschler**. Thank you, Mr. Chairman. I would ask if you and the other members of the subcommittee would read the statement. I know that you would have been in trouble had you not ben able to read the fine print on our game and fish licenses in Wyoming.

Mr. **Dingell**. Governor, I should inform you my success there has not matched my success here.

Governor **Herschler**. Mr. Chairman, these two pieces of legislation give me grave concerns as Governor of Wyoming, and I am also speaking for the other 13 Western Governors and their States on behalf of the Western Governors' Policy Office.

I would like to, if you will, address briefly three particular points in these two pieces of legislation: First, the policies of the Federal Government, and not taxes imposed by producing States, is the real cause of the spiraling costs of coal.

Second, the selective limiting of the taxing authority of State and local governments is inconsistent with the traditional governmental relationship.

Third, the net effect of severance tax limitations will be to slow the production of energy in the United States.

First of all, Mr. Chairman, it seems to me that the Federal Government regulatory and fiscal policies account for more than 50 percent of the price of coal, and I would like to briefly list for you and set forth some of the Federal laws or federally mandated taxes which affect the price of coal in every State in this country.

First, of course, there is the Federal withholding tax of 25 percent for corporate operators, Federal mineral royalties of a 12.5 percent minimum, the Abandoned Mine Reclamation Fund of 35 cents a ton, black lung insurance, landowner royalty payments, surface owner royalty payments, Federal bonding costs, workman's compensation, Federal reclamation costs, Federal unemployment taxes, Railroad Retirement Fund, social security taxes, air quality laws, water quality laws, Federal health and safety laws, and Federal monetary policies.

Yet I don't hear anyone saying, "Let's cut the Federal burden relative to the price of coal." Instead, the proposed legislation intends to limit the State's authority to tax, while at the same time we are called upon to produce energy and also accommodate the socioeconomic impacts associated with rapid energy development.

I guess my focus on Federal policy is not designed with criticism but it simply illustrates my point that severance taxes do not account for the lion's share of the cost of coal.

One additional factor should be pointed out, and that is, that for every per ton of coal mined, freight rates exceed the cost of mining and the cost of the product itself. I frankly do not know who owns the railroads, but I am beginning to believe that the Interstate Commerce Commission is a wholly owned subsidiary of the railroads.

Now let me give you a couple of examples: The value of coal f.o.b. the cars at Gillette, Wyo., and which is sold to a utility in San Antonio, Tex., is $6 per ton. The State of Wyoming receives via severance tax—and I would remind the subcommittee that our severance tax is only 10.5 percent and not the 17 percent that I have heard bandied around, but be that as it may, we are recovering 65 cents a ton severance tax on that $6 coal.

The delivered price per ton in San Antonio, Tex., is $25.55. Wyoming gets 2.5 percent of the delivered price; and, in addition, I have been advised by the president of the utility in San Antonio that it was required to buy the coal cars for Burlington Northern that transport the coal.

Now, this is the same operation that has that beautiful lady, who I believe is the mayor of San Antonio, Tex., so exercised, and she is one of the proponents of this legislation which is before you, but she apparently still loves the railroad and the Interstate Commerce Commission.

Another example is that Wyoming coal is sold to the Indiana and Michigan Electric Co. plants at Sullivan and Rockford and Lawrenceburg at a delivered price of $14.89 a ton. And the Wyoming severance tax is 39.5 cents per ton, or 2.7 of the delivered price.

So, I would cite, Mr. Chairman, that the Wyoming severance cost is not the reason for the higher utility rates, and I can see why the people in Michigan and Illinois and Texas are upset by their energy bills. However, the price of Wyoming coal has remained fairly constant. It is the cost of delivering Wyoming coal that has increased substantially.

The transportation costs reflect higher prices for materials and fuels and increased salaries and higher rates to secure capital. If the blame for the high utility bills is placed at the doorstep of Wyoming and other Western States, the numbers do not justify the arguments made by the National Coal Consumers Alliance or the utilities.

And this brings me to my second point; namely, that selective limitations on State and local taxing authority will substantially undermine the Federal system.

I am not here simply to beat the drums for State and local rights, although I believe that the issue should not be ignored. In a very real sense, we are only asking for fair treatment.

Western States, of course, have been characterized by some supporters of this legislation as an American OPEC, exporting their resources at a high cost to a captive, dependent market of energy consuming Americans, and yet we in the West have been for years importing products such as automobiles, refrigerators, and other nondurable goods and services from other regions of the country, and we will continue to do so because there are resources in these other regions which we need and which we do not have.

I would like to give you another example which results from a study entitled, "Taxing Coal" by Byron L. Durgon, who is the North Dakota tax commissioner. Let me read to you something that he has to say about this particular subject, and I quote:

> There is an electric generating plant under construction north of Bismarck which will use 5.6 million tons of coal per year to produce 6 billion kilowatt hours of electricity and ship the entire amount directly out of the State, to Minnesota. By the time the plant is in operation, the power will probably sell for about 5 cents per kilowatt hour in Minnesota for $300 million worth of electricity.
>
> The State of Minnesota, though it will suffer none of the environmental problems of coal development that producing States endure, will levy its 4 percent sales tax on that $300 million in electricity sales and will collect about $12 million in revenue for their State treasury.

May I add that North Dakota has a severance tax in excess of Wyoming, but not as large as Montana; but Mr. Durgon is making an assumption that if there were a 30 percent severance tax levied on the coal in North Dakota—let me quote further:

> A 30 percent coal severance tax on coal that sells for $6.12 per ton, which is projected to be the statewide average coal price in North Dakota in 1981, when the plant is operational, would therefore amount to $1.84 per ton severance tax, or a

total of only $10.3 million on the 5.6 million tons of coal that would be mined to operate that plant.

As you can see, even with a 30 percent severance tax on coal, the producing State would get $1.7 million less than the consuming State will realize in its sales tax.

Perhaps it would be appropriate, if you were to proceed with this legislation before you, to limit sales and property taxes that the utilities must pay to local units of government in the Midwest.

And this, of course, brings me to my third point, which I hope the subcommittee will consider, and that is, the long-term national impact of this kind of legislation.

I firmly believe that this legislation will reduce national coal output and significantly damage the current long-term economic and social viability of coal-producing States.

In Wyoming, coal production since 1970 has increased 1,000 percent, and the State population has increased by 43 percent during the same period. Federal tax dollars and assistance to Wyoming has not kept pace with that growth rate. The State has had to finance a large part of the community facilities to accommodate rapid energy development.

The severance tax is used to help pay for our schools, which we build to educate those coalminers' children and the superintendents of the plants' children. We put in sewers and water and we provide police protection and welfare payments, if you will, for those because of the rapid socioeconomic impacts. Without such help from our taxing ability, production could not proceed, because I can't imagine a coal company coming to Wyoming if they don't have decent housing and water and sewers and schools and police protection for their employees, and I would suspect that those companies will not proceed in an orderly manner, and our production will drop.

In conclusion, I would ask that you reconsider your position, if you have made one, in favor of this legislation, and that you not report it out for consideration.

Thank you very much, Mr. Chairman.

[Testimony resumes on p. 164.]

[Governor Herschler's prepared statement follows:]

STATEMENT OF

GOVERNOR ED HERSCHLER

OF WYOMING

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, I AM HERE TO DISCUSS H.R. 6625 AND H.R. 6654, WHICH ARE CURRENTLY BEFORE THIS COMMITTEE. THIS TYPE OF LEGISLATION IS OF GRAVE CONCERN TO ME, MOST WESTERN GOVERNORS, AND MANY OF THE APPALACHIAN STATES. WHILE BOTH OF THESE BILLS HAVE AS THEIR STATED PURPOSE THE NOBLE GOAL OF "REMOVING EXCESSIVE BURDENS ON THE PRODUCTION OF COAL," THE PROVISIONS OF THE PROPOSED LEGISLATION ARE INAPPROPRIATE AND MISDIRECTED.

THESE LEGISLATIVE PROPOSALS ARE A RESPONSE TO THE CONSUMERS ADVERSE REACTION TO EVER INCREASING ENERGY COSTS -- PARTICULARLY ELECTRIC POWER. THE RHETORIC AND NEWS STORIES SURROUNDING THIS ISSUE CAST THE COAL PRODUCING STATES, EAST AND WEST, AS BLUE-EYED ARABS HOLDING THE AMERICAN CONSUMERS CAPTIVE FOR AN EVER INCREASING RANSOM. SUCH RHETORIC SOUNDS SUSPICIOUSLY LIKE ELECTIONEERING IN CONSUMER STATES. EVEN MORE DISCOURAGING THOUGH IS THE FACT THAT IT DETRACTS FROM THE REAL PROBLEMS ASSOCIATED WITH COAL PRODUCTION IN AMERICA. THIS COUNTRY MUST PRODUCE COAL TO MEET OUR ENERGY REQUIREMENTS. AND WE MUST PRODUCE THAT COAL AT A PRICE THAT REFLECTS ITS REAL COSTS, BOTH PRESENT AND FUTURE.

I APPRECIATE THE OPPORTUNITY TO APPEAR HERE TODAY. I INTEND TO BRIEFLY DISCUSS THREE POINTS.

FIRST, THE POLICIES OF THE FEDERAL GOVERNMENT, AND NOT TAXES IMPOSED BY PRODUCING STATES, ARE THE REAL CAUSE OF THE SPIRALING COSTS OF COAL.

SECOND, SELECTIVELY LIMITING THE TAXING AUTHORITY OF STATE AND LOCAL GOVERNMENTS IS INCONSISTENT WITH THE TRADITIONAL GOVERNMENTAL RELATIONSHIP.

THIRD, THE NET EFFECT OF SEVERANCE TAX LIMITATIONS WILL BE TO SLOW THE PRODUCTION OF ENERGY IN THE UNITED STATES.

AS GOVERNOR OF A STATE WHICH WILL SHOULDER A SUBSTANTIAL BURDEN IN SATISFYING THIS NATION'S ENERGY DEMANDS, I AM OPPOSED TO ANY FEDERAL LEGISLATION WHICH WOULD LIMIT OR REDUCE OUR AUTHORITY TO LEVY A TAX ON MINERALS MINED WITHIN THE BORDERS OF WYOMING. LIKEWISE, I WOULD OPPOSE ANY FEDERAL INITIATIVE WHICH WOULD LIMIT THE TAXING AUTHORITY OF ANY OTHER POLITICAL SUBDIVISION IN THE UNITED STATES. YET CERTAIN UTILITIES AND CITIZENS IN VARIOUS PARTS OF THE UNITED STATES DO NOT HESITATE TO INTERFERE WITH THE TAX POLICIES OF WYOMING UNDER THE FALSE ASSUMPTION THAT BY LIMITING WYOMING'S TAX-SETTING AUTHORITY THEY WILL REDUCE THEIR ELECTRIC BILLS. NOTHING COULD BE FURTHER FROM THE TRUTH.

THE MAJOR CAUSE OF HIGH UTILITY BILLS IS NOT WYOMING OR ANY OTHER ENERGY RESOURCE EXPORTING STATE. IT IS THE FEDERAL GOVERNMENT AND ITS REGULATORY AND FISCAL POLICIES. I HAVE NOT HAD SUFFICIENT TIME TO COMPILE A COMPLETE LIST OF FEDERAL LAWS AND REGULATIONS WHICH AFFECT THE PRICE OF COAL, BUT I HAVE GATHERED SUFFICIENT INFORMATION TO DEMONSTRATE THAT THE STATE OF WYOMING'S SEVERANCE TAX IS NOT THE REASON FOR HIGH UTILITY BILLS IN THE SOUTH AND MIDWEST. THE FOLLOWING LIST BRIEFLY SETS FORTH FEDERAL LAWS OR FEDERALLY MANDATED TAXES WHICH AFFECT THE PRICE OF COAL IN EVERY STATE IN THIS COUNTRY:

1. FEDERAL WITHHOLDING TAXES -- 25%
2. FEDERAL MINERAL ROYALTIES -- 12 1/2% MINIMUM
3. ABANDONED MINE RECLAMATION FUND -- 35 CENTS PER TO
4. BLACK LUNG INSURANCE
5. LANDOWNER ROYALTY PAYMENTS
6. SURFACE OWNER ROYALTY PAYMENTS
7. FEDERAL BONDING COSTS
8. WORKMAN'S COMPENSATION
9. FEDERAL RECLAMATION COSTS
10. FEDERAL UNEMPLOYMENT TAXES
11. RAILROAD RETIREMENT FUND

12. SOCIAL SECURITY TAX
13. AIR QUALITY LAWS
14. WATER QUALITY LAWS
15. FEDERAL HEALTH AND SAFETY LAWS
16. FEDERAL MONETARY POLICIES.

ALL TOTALLED, FEDERAL LAWS, REGULATIONS, AND TAXES ACCOUNT FOR MORE THAN 50 PERCENT OF THE PRICE OF COAL. FURTHER, FEDERAL MONETARY POLICIES RELATING TO BORROWING MONEY ACCOUNT FOR MUCH OF THE COST ASSOCIATED WITH BUILDING POWER PLANTS. YET, IN SPITE OF THESE MASSIVE FEDERAL COSTS, I DON'T HEAR ANYONE SAYING "LET'S CUT THE FEDERAL BURDEN RELATING TO THE PRICE OF COAL." INSTEAD, LEGISLATION IS PROPOSED WHICH WOULD LIMIT THE TAXING AUTHORITY OF STATES WHICH ARE CALLED UPON TO PRODUCE THE ENERGY, AND WHICH MUST ACCOMMODATE THE IMPACTS ASSOCIATED WITH RAPID ENERGY DEVELOPMENT. IT SEEMS TO ME THAT CONGRESS IS A LITTLE LIKE THE NEIGHBORHOOD BUSYBODY -- TOO BUSY TO CLEAN HER OWN HOUSE BECAUSE IT'S (ALREADY) A DISASTER, BUT SHE HAS PLENTY OF TIME TO CRITICIZE HER NEIGHBOR'S HOUSE.

LET'S LOOK A LITTLE DEEPER AT THE IMPACT OF FEDERAL POLICIES ON THE PRICE OF COAL. MY FOCUS ON FEDERAL POLICY IS NOT DESIGNED SO MUCH AS CRITICISM, IT SIMPLY ILLUSTRATES MY POINT THAT SEVERANCE TAXES DO NOT ACCOUNT FOR THE LION'S SHARE OF THE COST OF COAL.

I STRONGLY SUPPORT THE AIR QUALITY STANDARDS IMPOSED BY THE NATIONAL CLEAN AIR ACT AMENDMENTS OF 1977. BUT WE MUST REMEMBER THAT THEY EFFECTIVELY INCREASE THE TOTAL CAPITAL AND OPERATING COST OF MOST POWER PLANTS BY 15 TO 25 PERCENT.

THE REQUIREMENTS OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, RESULT IN INCREASED COAL COST FOR RECLAMATION OF MINED LAND, RANGING FROM $1.25 PER TON IN THE WEST TO OVER $2.50 PER TON IN THE EAST. INDIVIDUAL COST PER MINE VARIES. FOR EXAMPLE, IN WYOMING, IT RANGES FROM $1,300 PER ACRE UP TO $8,100 PER ACRE. RECLAMATION COSTS ARE REFLECTED IN THE PRICE OF COAL.

SIMILARLY, FEDERAL MINERAL ROYALTY POLICY ALSO ADDS TO THE COST. IN 1963, THE MINERAL ROYALTY RATE WAS 15 CENTS PER TON FOR ONE PARTICULAR COAL MINE IN WYOMING. BY 1965, THE PRICE HAD BEEN RAISED TO 17½ CENTS. BY 1978, THE PRICE HAD BEEN RAISED TO 12½% OF THE VALUE OF THE COAL. NOTE, I SAID 12½ PERCENT. ESSENTIALLY, THE COST HAD INCREASED FROM 15 CENTS FOR COAL IN 1963 TO $1.00 OR MORE PER TON BY 1978 FOR SURFACE MINED COAL.

Federal rental fees for the same coal tract increased from 50 cents per acre in 1965 to $3.00 per acre in 1978. For the newer leases, the annual rental fee may exceed $5.00 per acre.

The above figures briefly outline the significance of the federal role in setting the price of coal. It is not the State of Wyoming or any other coal-producing state that determines the price. Federal policy also sets the price for transportation rates for coal shipments.

According to the report published in March, 1980, by the President's Commission on Coal concerning the Interstate Commerce Commission, "The greatest regulatory constraint that presently threatens the cost advantage of coal unnecessarily is the ICC policy of allowing high rail tariffs for the rail transport of coal, especially in the West."

The report goes on to say: "Recent ICC decisions have tended to establish a guideline for coal traffic of 107 percent of fully allocated costs (the sum of fixed and variable costs). The additional 7 percent is intended to subsidize other traffic at less than full costs, and in some cases, at less than variable costs."

Since becoming Governor of Wyoming, I have watched rail rates skyrocket. In fact, the rates are so high, that the President of the utility supplying electric power for San Antonio, Texas told me at a recent mine dedication in Wyoming, that the city was not only paying the high freight rates but they had to buy the railroad cars for the Burlington Northern.

I do not know who owns the railroads, but, I am beginning to believe that the ICC is their wholly owned subsidiary.

One additional factor should be pointed out, and that is that in some instances, the per ton freight rates exceed the cost for mining the coal. There is a dilemma here which I cannot answer. If the railroads do not receive sufficient operating revenues, then the likelihood of the Rock Island, Penn-Central, and the Milwaukee Roadroads collapsing will increase. Yet, no one wants the federal government to subsidize the railroad. Further, no one wants to see a reduction in rail service.

THE REAL ISSUE BEFORE THIS COMMITTEE IS THE INCREASING COST OF ELECTRICITY, DISGUISED AS LIMITING STATE TAXING AUTHORITY ON ENERGY MINERALS. FOR MANY YEARS, THIS COUNTRY LIVED WITH CHEAP ENERGY. IT WASN'T UNTIL THE FALL OF 1973 THAT IT WAS BROUGHT HOME THAT WE COULD NO LONGER SURVIVE POLITICALLY AND ECONOMICALLY WITH THAT PHILOSOPHY. THIS NATION'S ENERGY APPETITE HAS REQUIRED US TO THINK ABOUT ENERGY FUELS OTHER THAN OIL AND GAS. TWO ALTERNATIVES HAVE BEEN AGGRESSIVELY PURSUED, CONSERVATION AND INCREASED UTILIZATION OF COAL. ENERGY CONSERVATION SEEMS TO BE WORKING ALTHOUGH SOMEWHAT PAINFULLY. HOWEVER, COAL CONVERSION IS NOT PROCEEDING AS SMOOTHLY.

MANY UTILITIES ARE HAVING TROUBLE COMPLYING WITH THE RULES OF THE DEPARTMENT OF ENERGY AND THE ENVIRONMENTAL PROTECTION AGENCY. FURTHER, THE COSTS ASSOCIATED WITH CONVERTING FROM OIL AND GAS TO COAL HAVE EXCEEDED THE ESTIMATES OF THE FEDERAL GOVERNMENT. IN THE POLITICS OF SPECIAL INTEREST, ELECTED OFFICIALS NEED SOMEONE TO POINT TO AS THE CAUSE FOR THE HIGH PRICE OF CONVERTING TO COAL. UNFORTUNATELY, THE EASIEST PEOPLE TO BLAME ARE THE STATES WHICH PRODUCE THE COAL.

WYOMING TAXES HAVE BEEN SINGLED OUT AS ONE OF THE MAJOR REASONS FOR THE HIGH PRICE OF COAL AND ULTIMATELY, FOR THE HIGH PRICE OF UTILITY RATES. THE STATE OF WYOMING LEVIES A 10½ PERCENT SEVERANCE TAX ON COAL. IN ADDITION, CITIES, COUNTIES, AND SCHOOL DISTRICTS LEVY A SALES TAX, PROPERTY TAX, AND AN AD VALORUM TAX, JUST LIKE OTHER CITIES, COUNTIES, AND SCHOOL DISTRICTS THROUGHOUT THE UNITED STATES. LET ME REPEAT, WYOMING LEVIES A SEVERANCE TAX OF 10½ PERCENT ON THE COAL, NOT 17 PERCENT AS COMMONLY REPORTED.

WYOMING'S COAL SEVERANCE TAX IS BASED ON THE VALUE OF THE GROSS PRODUCT, WHICH IS THE "FAIR CASH MARKET OF THE PRODUCT AT THE MINE OR MINING CLAIM WHERE PRODUCED." THE STATE DOES NOT INCLUDE THE FEDERAL ROYALTY, ABANDONED MINE RECLAMATION FUND TAX, OR THE BLACK LUNG INSURANCE TAX WHEN COMPUTING THE VALUE OF THE COAL. THEREFORE, THE NET EFFECTIVE STATE SEVERANCE TAX IS ABOUT 80 PERCENT OF THE 10½ PERCENT AUTHORIZED, OR 8½ PERCENT OF THE VALUE OF THE COAL AT THE MINE.

THE MAJORITY OF THE COAL PRODUCED IN WYOMING IS LESS THAN 10,500 BTU PER POUND COAL. THIS TRANSLATES INTO THE STATE RECEIVING ABOUT EIGHT CENTS PER MILLION BTU'S FOR THE COAL PRODUCED. THE COST OF DELIVERED COAL FROM A WYOMING MINE TO THE POWERTON, ILLINOIS POWER PLANT IS $2.28½ PER MILLION BTU'S. THEREFORE, TOTAL STATE RECEIPTS VIA SEVERANCE TAXES EQUALS 3½ PERCENT OF THE TOTAL DELIVERED PRICE OF COAL IN POWERTON, ILLINOIS.

OTHER EXAMPLES INCLUDE THE COAL SOLD TO SAN ANTONIO, TEXAS. THE VALUE OF THE COAL IS $6.00 PER TON, THE STATE RECEIVES VIA SEVERANCE TAX 63 CENTS; THE DELIVERED PRICE PER TON IS $25.55. THE WYOMING COST IS ONLY 2½ PERCENT OF THE DELIVERED PRICE. WYOMING COAL IS SOLD TO THE INDIANA AND MICHIGAN ELECTRIC COMPANY PLANTS AT SULLIVAN, ROCKFORD, AND LAWARANCEBURG AT A DELIVERED PRICE OF $14.39 PER TON. THE WYOMING SEVERANCE TAX IS ONLY 39½ CENTS PER TON, WHICH EQUALS 2 AND 7/10 PERCENT OF THE TOTAL DELIVERED PRICE. I COULD GO ON AND CITE MANY MORE EXAMPLES, BUT IT WILL ONLY HIGHLIGHT THE POINT THAT WYOMING'S SEVERANCE TAX IS NOT THE REASON FOR HIGH UTILITY BILLS.

IN ANY EVENT, WHERE DOES THE 96 TO 97 PERCENT OF THE OTHER COSTS OF DELIVERED COAL GO? TO FEDERAL TAXES, SHIPPING CHARGES, MINING COSTS, LABOR, AND OTHER ASSORTED FACTORS.

IF YOU WILL RECALL EARLIER IN MY STATEMENT, THE FEDERAL GOVERNMENT TAKES AT LEAST 50 PERCENT OF THE TOTAL COST OF COAL AT THE MINE THROUGH TAXES AND REGULATION. THE INTERSTATE COMMERCE COMMISSION ALLOWS THE RAILROADS TO CHARGE 107 PERCENT OF THE COST OF SHIPPING COAL. THE FEDERAL GOVERNMENT LEVIES A 12½ PERCENT ROYALTY RATE; THE FEDERAL GOVERNMENT SETS A 35 CENT PER TON FEE FOR THE ABANDONED MINE RECLAMATION FUND; AND RECLAMATION COSTS REQUIRED TO COMPLY WITH FEDERAL LAWS RANGE FROM $1.25 PER TON IN WYOMING TO OVER $2.50 PER TON IN THE EAST. DESPITE THESE FACTS, WYOMING AND OTHER WESTERN COAL STATES ARE SINGLED OUT AS THE ONLY REASON FOR HIGH UTILITY BILLS. THE FACTS SIMPLY DO NOT SUBSTANTIATE SUCH ARGUMENTS.

ANOTHER AREA NEEDS TO BE ADDRESSED, AND THAT IS THE GENERAL PRICE INCREASE IN THE COST OF UTILITY BOILER FUELS AND THE MIX OF FUELS USED. NATIONALLY, IN APRIL OF 1979, COAL EQUALLED 67 PERCENT OF THE BOILER FUEL BASE, OIL 15.8 PERCENT, AND GAS 17.1 PERCENT. BY DECEMBER OF 1979, COAL COMPRISED 65.8 PERCENT, OIL 17.9 PERCENT, AND GAS 16.3 PERCENT. THIS INDICATES THAT COAL IS NOT BEING FULLY UTILIZED AS BOILER FUEL. NATIONALLY, PRICES FOR THESE FUELS SHOWED A VERY DRAMATIC change. In April of 1979, coal averaged 120 cents per million BTU's, oil 271.7 cents per million BTU's, and gas 163.7 cents per million BTU's. By December of 1979, coal had increased to 129.2 cents, oil to 403.5 cents, and gas to 183 cents per million BTU's. During this nine month period, coal had increased slightly less than eight percent, oil slightly over 48 percent, and gas slightly less than 12 percent per million BTU's delivered.

What does this mean? It means that those utilities which depend on oil and gas are bound to have sharp rate increases almost monthly. In Michigan 14.4 percent of the electric utility fuel base is derived from oil and gas, Wisconsin is 5.6 percent, Illinois is 10.1 percent, Indiana is 2 percent, Minnesota is 3.1 percent, and Texas is 71.6 percent. This was for the month of April, 1979. It doesn't take much figuring to see what affect a slight increase in imported oil has on utility bills. Further, comparing the price of coal against other boiler fuel indicates that coal is a bargain within a bargain. This is especially true of Western coal.

A QUICK COMPARISON OF COAL PRICES AMONG THE MAJOR COAL PRODUCING STATES WILL ILLUSTRATE THAT WESTERN COAL IS DEFINATELY NOT THE MAJOR REASON FOR HIGH UTILITY BILLS. IN 1970, THE AVERAGE ANNUAL FREE ON BOARD PRICE OF COAL IN ILLINOIS, INDIANA, KENTUCKY, AND OHIO WAS $7.50 PER TON. BY 1979, THE PRICE OF THE COAL IN THESE STATES HAD INCREASED TO AN AVERAGE OF JUST SLIGHTLY OVER $21.00 PER TON. THIS REPRESENTS NEARLY A 300 PERCENT INCREASE IN 10 YEARS.

WYOMING COAL IN 1970 SOLD FOR AN AVERAGE OF $5.24 PER TON AND BY 1979 THE PRICE HAD INCREASED TO AN AVERAGE OF $8.52 PER TON, OR A 63 PERCENT INCREASE IN THE SAME TEN YEAR PERIOD. WYOMING COAL INCREASED BY $3.28 PER TON IN TEN YEARS, EASTERN COAL INCREASED BY $14.00 PER TON IN THE SAME TIME FRAME. OTHER BOILER FUELS, SUCH AS GAS AND OIL SHOWED INCREASES SIMILAR TO THAT OF EASTERN COAL, BUT IN A SHORTER TIME FRAME.

DOMESTIC OIL IN 1974, COST AN AVERAGE OF $7.18 A BARREL. IN 1979, IT WAS $14.27. IMPORTED OIL AVERAGED $12.52, AND BY 1979, IT HAD INCREASED TO $21.67. THE WELLHEAD PRICE OF DOMESTIC NATURAL GAS SHOWS AN EVEN HIGHER RATE OF INCREASE. ACCORDING TO THE FIGURES FROM THE DEPARTMENT OF ENERGY, THE WELLHEAD PRICE OF A THOUSAND CUBIC FEET OF GAS IN 1974, WAS 30.4 CENTS. IN 1979, THE AVERAGE PRICE WAS 121.6 CENTS.

WITH OIL AND GAS COSTS INCREASING AT THE ABOVE OUTLINED RATES, I CAN SEE WHY THE PEOPLE IN MICHIGAN, ILLINOIS, AND TEXAS ARE UPSET ABOUT THEIR ENERGY BILLS. HOWEVER, THE PRICE OF WYOMING COAL HAS REMAINED FAIRLY CONSTANT. IT IS THE COST OF DELIVERING WYOMING COAL THAT HAS INCREASED SUBSTANTIALLY. THE TRANSPORTATION COSTS REFLECT HIGHER PRICES FOR MATERIALS, FUEL, INCREASED SALARIES, AND HIGHER INTEREST RATES TO SECURE CAPITAL. YET THE BLAME FOR THE HIGH UTILITY BILLS IS PLACED AT THE DOORSTEP OF WYOMING. THE NUMBERS DO NOT JUSTIFY THE ARGUMENTS MADE BY THE NATIONAL COAL CONSUMERS' ALLIANCE OR THE UTILITIES.

THIS BRINGS ME TO MY SECOND POINT, NAMELY THAT SELECTIVE LIMITATIONS ON STATE AND LOCAL TAXING AUTHORITY WILL SUBSTANTIALLY UNDERMINE WHAT REMAINS OF OUR FEDERAL SYSTEM. I AM NOT HERE TO SIMPLY BEAT THE DRUM OF STATE AND LOCAL RIGHTS, ALTHOUGH I BELIEVE THAT ISSUE SHOULD NOT BE IGNORED. IN A VERY REAL SENSE WE ARE ONLY ASKING FOR FAIR TREATMENT. MANY OF US IN THE WEST, IN WATCHING THE EVOLUTION OF THIS PIECE OF LEGISLATION, HAVE BEEN AMAZED THAT SOME OF THE PROPONENTS OF THIS BILL TO LIMIT SEVERANCE TAX MONIES ARE THEMSELVES BENEFICIARIES OF IDENTICAL TAX EFFORTS BY OTHER STATES. AS MOST OF YOU KNOW, THE STATES OF TEXAS AND LOUISIANA HAVE FOR YEARS IMPOSED A SEVERANCE TAX ON OIL AND NATURAL GAS PRODUCTION. IN A STUDY CONTRASTING ENERGY-PRODUCING STATES WITH ENERGY-CONSUMING STATES, CHASE ECONOMETRICS (A SUBSIDIARY OF CHASE MANHATTAN BANK) ESTIMATED THAT IN 1976, PRIOR TO PRICE DECONTROL, THE ECONOMIES OF TEXAS AND LOUISIANA EACH ENJOYED CLOSE TO A $10 BILLION SURPLUS IN ENERGY DEALINGS WITH OTHER STATES. SOME OBSERVERS BELIEVE THAT FIGURE COULD EASILY DOUBLE IN THE FUTURE, WITH DECONTROL AND RISING DEMAND.

THERE IS NO QUESTION BUT WHAT OIL AND GAS PRODUCTION CREATE EXTERNAL PUBLIC COSTS -- SOCIAL, ECONOMIC, AND ENVIRONMENTAL COSTS WHICH THE SEVERANCE TAX HELPS OFFSET. HOWEVER, STRIP-MINING OF COAL REQUIRES EXPENSIVE LAND RECLAMATION MEASURES AND BOOMTOWN ASSISTANCE PROGRAMS WHICH ARE UNNECESSARY WITH OIL AND GAS PRODUCTION.

WESTERN STATES HAVE BEEN CHARACTERIZED BY SOME SUPPORTERS OF THIS BILL AS AN AMERICAN OPEC, EXPORTING THEIR RESOURCES AT HIGH COST TO A CAPTIVE, DEPENDENT MARKET OF ENERGY-CONSUMING AMERICANS. YET WE IN THE WEST HAVE FOR YEARS BEEN "IMPORTING" THE PRODUCTS SUCH AS AUTOMOBILES, REFRIGERATORS, AND OTHER NON-DURABLE GOODS AND SERVICES FROM OTHER REGIONS OF THE COUNTRY. AND WE WILL CONTINUE TO DO SO, BECAUSE THERE ARE RESOURCES IN THOSE OTHER REGIONS WHICH WE NEED AND WHICH WE DO NOT HAVE.

FOR EXAMPLE, STATES IN THE MORE INDUSTRIALIZED REGIONS OF OUR COUNTRY TAX THEIR MANUFACTURED PRODUCTS AT SEVERAL STAGES OF PRODUCTION, WHENEVER VALUE IS ADDED OR A PURCHASE/SALE TRANSACTION OCCURS. THOSE PRODUCTS USUALLY OFFER SEVERAL OPPORTUNITIES FOR CAPTURING STATE AND LOCAL TAXES. COAL AND OTHER MINERAL PRODUCTION, ON THE OTHER HAND, FREQUENTLY PRESENT A ONE-TIME TAXING OPPORTUNITY FOR THE PRODUCING STATE, SINCE TAXES ON CRUSHING, PROCESSING, TRANSPORTING, AND SALE OF COAL ARE OFTEN LEVIED OUTSIDE THE SOURCE STATE.

A DRAMATIC ILLUSTRATION OF THE COMPARATIVE IMPACT OF SEVERANCE TAX AND LOCAL SALES TAX WAS PREPARED BY THE NORTH DAKOTA TAX COMMISSIONER. ACCORDING TO HIS STUDY, ON A PER TON BASIS A PRODUCING STATE WITH A 30 PERCENT SEVERANCE TAX ON COAL RECEIVES LESS REVENUE THAN A CONSUMING STATE WITH A 4 PERCENT SALES TAX ON THE SALE OF ELECTRICITY. OF THE SIX MIDWESTERN STATES WHOSE UTILITIES ARE MAJOR CONSUMERS OF WESTERN COAL, ILLINOIS, INDIANA, MICHIGAN, MINNESOTA, AND WISCONSIN IMPOSE A 4 PERCENT SALES TAX, IOWA COLLECTS A 3 PERCENT TAX. FURTHER, SOME LOCAL JURISDICTIONS LEVY AN ADDITIONAL ONE PERCENT. WITH WYOMING APPLYING ONLY A 10 AND ONE-HALF PERCENT SEVERANCE, IT IS SAFE TO SAY THAT LOCAL TAXES IN THE MIDWEST CONTRIBUTE A GREAT DEAL MORE TO THE CONSUMERS COST OF POWER THAN WYOMING'S SEVERANCE TAX.

IF H.R. 6625 AND H.R. 6654 ARE PASSED, THEY WILL NOT STOP THE UTILITIES FROM SEEKING RATE INCREASES. IT WILL NOT STOP THE INCREASE IN THE COST OF ENERGY, OR STOP THE INCREASE IN UTILITY BILLS. FURTHER, THE SALES AND PROPERTY TAX RATES LEVIED ON UTILITIES IN THE EAST COMPRISE A HIGHER TAX RATE ON DELIVERED ELECTRICITY THAN THE WYOMING SEVERANCE TAX. MAYBE IT WOULD BE APPROPRIATE TO CONSIDER LIMITING SALES AND PROPERTY TAXES THAT THE UTILITIES MUST PAY TO LOCAL UNITS OF GOVERNMENT IN THE EAST.

OUR AMERICAN SYSTEM OF GOVERNMENT WOULD BE MOVING DOWN A DANGEROUS ROAD, IF WE USE THE NATIONAL POWER AS A WEAPON IN REGIONAL DISPUTES. QUESTIONS OF LOCAL AND STATE TAXATION HAVE TRADITIONALLY ESCAPED EXCESSIVE MANIPULATION BY THE FEDERAL GOVERNMENT BECAUSE OF THEIR CLOSE RELATIONSHIP WITH PUBLIC CONTROL OF LOCAL GOVERNMENT. I BELIEVE WE SHOULD RESPECT THAT TRADITION.

A THIRD POINT WHICH I HOPE THE COMMITTEE WILL CONSIDER IS THE LONG TERM NATIONAL IMPACT OF THIS KIND OF LEGISLATION. I FIRMLY BELIEVE THAT THIS LEGISLATION WILL REDUCE NATIONAL COAL OUTPUT AND SIGNIFICANTLY DAMAGE THE CURRENT AND LONG TERM ECONOMIC AND SOCIAL VIABILITY OF COAL PRODUCING STATES.

COAL PRODUCTION REQUIRES PEOPLE AND PEOPLE REQUIRE GOVERNMENT SERVICES. WITHOUT ADEQUATE HOUSING, SEWER AND WATER, AND OTHER SOCIAL NECESSITIES THE COAL CANNOT BE PRODUCED AND THE POWER PLANTS WILL NOT BE BUILT. THE POPULAR TERM FOR ENERGY BOOMTOWNS IS SOCIO-ECONOMIC IMPACT. WYOMING HAS HAD MORE THAN ITS SHARE OF EXPERIENCE WITH THIS PROBLEM. BUT IS ALSO A NATIONAL PROBLEM IN THAT LACK OF ADEQUATE LABOR FORCE, CONSTRUCTION DELAYS, ETC., ALL TRANSLATE DIRECTLY INTO INCREASED COST AND REDUCED PRODUCTION OF COAL AND ENERGY. EQUALLY IMPORTANT NOT ONLY TO WYOMING BUT TO OUR LONG TERM NATIONAL INTEREST IS NOT CREATING AN APPALACHIA OF THE WEST. PRODUCTION OF ENERGY AND COAL IN PARTICULAR NECESSARILY IMPOSES SOCIAL AND ECONOMIC COSTS, BUT THESE COSTS SHOULD NOT BE BORNE SOLELY BY PRODUCING STATES.

I BELIEVE THAT IT IS UNFAIR THAT THE CITIZENS OF WYOMING SHOULD HAVE TO BEAR THE ENTIRE ENVIRONMENTAL, SOCIAL, AND ECONOMIC COSTS OF COAL AND OTHER ENERGY DEVELOPMENT WITHOUT RECEIVING THE NECESSARY FINANCIAL RELIEF TO MITIGATE THESE IMPACTS. THEREFORE, THE STATE OF WYOMING HAS HAD TO SHIFT SOME OF THOSE COSTS FORWARD TO THE ENERGY CONSUMERS, THROUGH A SEVERANCE TAX, SO THAT THE PEOPLE OF WYOMING WILL NOT CARRY THE FULL BURDEN OF NATIONAL ENERGY DEVELOPMENT. THOSE COSTS MUST BE INTERNALIZED SO THAT THE PRICE WHICH THE CONSUMER PAYS FOR COAL AND ULTIMATELY ELECTRICITY, REFLECTS THE REAL COST OF COAL PRODUCTION.

WYOMING'S SEVERANCE TAX PARTIALLY PAYS FOR MITIGATING THE IMPACTS ASSOCIATED WITH RAPID COAL DEVELOPMENT. SINCE 1970, WYOMING'S COAL PRODUCTION HAS INCREASED 1,000 PERCENT. DURING THE SAME TIME FRAME, THE STATE'S POPULATION HAS INCREASED BY 43 PERCENT. HOWEVER, FEDERAL TAX DOLLARS AND ASSISTANCE TO WYOMING HAVE NOT KEPT PACE WITH OUR POPULATION GROWTH RATE. THEREFORE, THE STATE HAS HAD TO FINANCE A LARGE PART OF THE COMMUNITY FACILITIES NEEDED TO ACCOMMODATE RAPID ENERGY DEVELOPMENT. FURTHER, WYOMING DOES NOT HAVE THE INDUSTRIAL BASE OR MANUFACTURING INDUSTRIES NECESSARY TO DIVERSIFY ITS ECONOMIC BASE WHEN THE NATURAL RESOURCES ARE MINED-OUT. ONE ONLY HAS TO LOOK AT THE APPALACHIAN STATES TO SEE WHAT HAPPENS WHEN THE COAL INDUSTRY LEAVES. WYOMING CITIZENS DO NOT WANT TO HAVE THAT TYPE OF LEGACY. AND IF YOU RECALL, SUBSTANTIAL FEDERAL INVESTMENT HAS POURED INTO APPALACHIA SINCE 1960 TO CORRECT THE GRIM SOCIAL AND ECONOMIC LANDSCAPE THAT REMAINED WHEN THE COAL COMPANIES LEFT.

WYOMING'S SEVERANCE TAX HELPS PAY FOR HOSPITALS, STREETS, ROADS, WATER SUPPLIES, SEWERS, EDUCATION, AND IMPACT ASSISTANCE TO CITIES AND COUNTIES. ONE THING TO REMEMBER, IS THAT WYOMING COLLECTS ITS SEVERANCE TAX ONLY ONCE ON EACH TON OF COAL. ONCE MINED, THAT COAL IS GONE FOREVER. OUR RESOURCE

BASE DOES NOT REPLENISH ITSELF. THEREFORE, THE STATE HAS SET ASIDE ONE-FOURTH OF ITS COAL-TAX REVENUES TO HELP ALLEVIATE THE IMPACTS OF THE INEVITABLE COAL BUST THAT MUST COME WHEN THE NATIONAL DEMAND FOR COAL SUBSIDES.

WYOMING'S SEVERANCE TAX IS DISTRIBUTED IN THE FOLLOWING MANNER:

1. ONE PERCENT GOES TO OUR HIGHWAY FUND TO PROVIDE ESSENTIAL HIGHWAY SERVICES. PART OF THIS FUND PAYS FOR NEW HIGHWAYS AND ROADS TO THE COAL MINES.
2. 1½ PERCENT IS CONTRIBUTED TO THE WATER DEVELOPMENT FUND TO PAY FOR MUNICIPAL WATER SUPPLIES AND INDUSTRIAL WATER SUPPLIES THAT THE MINERAL AND ENERGY SECTOR NEEDS IN ORDER TO GROW.
3. TWO PERCENT IS PUT DIRECTLY BACK TO CITIES AND COUNTIES IN THE IMPACT AREA TO FINANCE SEWERS, STREETS, AND MUNICIPAL WATER PROJECTS.
4. 1½ PERCENT IS PUT INTO THE CAPITAL FACILITIES ACCOUNT TO PAY FOR THE SCHOOLS WHERE THE COAL MINER AND PLANT CONSTRUCTION EMPLOYEE'S CHILDREN ARE EDUCATED. PART OF THIS ALSO GOES TO OUR COMMUNITY COLLEGES WHICH TRAIN OUR YOUNG PEOPLE IN VOCATIONAL SKILLS THAT THE ENERGY INDUSTRY NEEDS.

5. 2½ PERCENT GOES TO OUR PERMANENT TRUST FUND, AN INSURANCE POLICY FOR THE DAY WHEN OUR MINERAL BASE IS GONE, AND WHEN WE STILL BE CALLED UPON TO PROVIDE ESSENTIAL PUBLIC SERVICES.

AS I STATED EARLIER, OUR MINERAL TAX IS USED TO ALLEVIATE AND MITIGATE THE SOCIAL AND ECONOMIC DISRUPTIONS WHICH HAVE ATTENDED ENERGY DEVELOPMENT. THESE DISRUPTIONS ARE NOT UNLIKE THE PROBLEMS FACING MANY MIDWESTERN AND EASTERN INDUSTRIAL CITIES THAT HAVE SEEN THEIR MANUFACTURING PLANTS LOCATE ELSEWHERE. YOU SEEK FEDERAL ASSISTANCE AND RECEIVE IT. WE SEEK FEDERAL ASSISTANCE AND DON'T RECEIVE IT. THEREFORE, WE HAVE TO DEVELOP OUR OWN FINANCIAL INSTITUTIONS TO PAY FOR THE RAPID GROWTH-RELATED IMPACTS.

ADDED TO THIS, ARE CUTBACKS IN FEDERAL SPENDING. GENERAL REVENUE SHARING IS GONE, DEFERRALS HAVE BEEN MADE IN THE HIGHWAY PROGRAM, IN SEWER AND WATER PROGRAMS, AND IN EDUCATION PROGRAMS. NEVERTHELESS, THE STATES ARE STILL BEING REQUIRED TO MEET FEDERAL STANDARDS AND TO SUPPORT THESE NEEDED PUBLIC SERVICES.

Mr. Chairman, in conclusion, I would strongly urge that you not report this legislation. As proposed, this legislation sets a very dangerous precedent, and would represent another case of federal meddling in state policy. Further, it will have severe repercussions on the ability of the State of Wyoming to plan for and accommodate the impacts that attend rapid energy development. Furthermore, it will reduce national coal production. I can understand the concerns of people over ever increasing energy bills, but as I have outlined, the State of Wyoming's tax policy is not the cause of increased prices.

Thank you for this opportunity to state my view.

COAL - FREE ON BOARD MINE
Average Dollar Value per Ton per State

Year/State	Illinois	Indiana	Kentucky	Ohio	Montana	Wyoming
1970	7.62	7.13	8.80	7.35	2.87	5.24
1971	8.05	7.64	9.57	7.73	2.68	5.00
1972	8.69	7.90	9.64	8.44	2.87	5.30
1973	9.06	8.10	9.85	9.86	3.77	10.83
1974	12.20	10.20	20.82	15.04	4.76	6.13
1975	16.30	12.42	19.38	18.26	5.64	7.51
1976	16.83	13.06	20.95	17.58	5.19	7.41
1977	17.28	13.83	[illegible]	17.70	5.93	8.21
1978	19.07	16.94	20.21	20.29	6.87	8.49
1979 est.	21.00	20.00	22.00	22.50	8.50	9.52

SOURCE: DOE - Energy Information Administration (EIA)

CRUDE OIL PRICES PER BARREL
(Dollar)

Year/Source	Domestic	Imported
1974	7.18	12.52
1975	8.39	13.93
1976	8.84	13.48
1977	9.55	14.53
1978	10.61	14.57
1979	14.27	21.67

SOURCE: DOE-EIA

DOMESTIC NATURAL GAS - WELLHEAD
Cents per Thousand Cubic Feet

1974	30.4
1975	34.4
1976	47.9
1977	69.5
1978	85.9
1979	121.6

SOURCE: DOE-EIA

DELIVERED PRICE OF FUEL BY TYPE
cents per million BTU's

	Coal	Oil	Gas
March, 1978	113.2	219.8	139.3
May, 1978	110.5	217.9	141.4
July, 1978	110.1	211.3	148.0
October, 1978	113.9	221.5	145.5
December, 1978	115.3	212.0	138.3
January, 1979	115.7	237.5	149.0
February, 1979	114.7	250.8	157.9
March, 1979	116.[illegible]	[illegible]	161.9
April, 1979	120.0	[illegible]	163.7
June, 1979	121.9	[illegible]	178.7
July, 1979	122.2	[illegible]	178.1
August, 1979	122.4	[illegible]	181.1
October, 1979	127.[illegible]	[illegible]	186.1
November, 1979	127.6	[illegible]	180.2
December, 1979	129.2	403.5	183.0
January, 1980	128.7	429.5	193.7

Percent Increase - March, 1978 - January, 1980

Coal 13.69
Oil 95.40
Gas 39.05

STATE GENERAL SALES TAX COLLECTIONS

State	1960	1970	1978
Illinois	$374,949,000	$1,008,182,000	$2,011,704,000
Indiana	189,170,000	380,739,000	1,120,732,000
Michigan	363,221,000	828,491,000	1,531,297,000
Minnesota	---*	195,620,000	537,478,000
Ohio	265,201,000	658,759,000	1,298,620,000
Texas	---*	552,361,000	2,031,730,000
Wisconsin	---*	272,614,000	762,114,000
Wyoming	12,272,000	30,967,000	115,969,000

*Sales Tax not levied in 1960

SOURCE: Department of Commerce, Bureau of the Census

STATE GENERAL SALES TAX RATE

State	Tax Rate %	Local Tax Levied	Local Amount Levied
Illinois	4%	Yes	0.5 to 2%
Indiana	4%	No	--
Michigan	4%	No	--
Minnesota	4%	Yes	1%
Ohio	4%	Yes	0.5%
Texas	4%	Yes	1%
Wisconsin	4%	Yes	Not levied
Wyoming	3%	Yes	1%

SOURCE: Department of Commerce, Bureau of the Census

STATE INDIVIDUAL INCOME TAX COLLECTIONS

State	1969	1970	1978
Illinois	---*	$575,601,000	$1,592,695,000
Indiana	---*	216,384,000	538,225,000
Michigan	---*	415,345,000	1,695,746,000
Minnesota	89,328,000	345,733,000	1,074,552,000
Ohio	---*	---*	775,494,000
Texas	---*	---*	---*
Wisconsin	139,324,000	489,944,000	1,324,679,000
Wyoming	---*	---*	---*

*Income Tax not levied

SOURCE:Department of Commerce, Bureau of the Census

STATE INDIVIDUAL INCOME TAX RATE (September, 1978)

Illinois	2.5% of net income
Indiana	2.0% of net income, County Income Tax optional
Michigan	4.6% of net income, single business tax applied
Minnesota	1.6% to 17% of net income
Ohio	0.5% to 3.5% of net income
Wisconsin	3.1% to 11.4% of net income

SOURCE:Department of Commerce, Bureau of the Census

Mr. SHARP [presiding]. Thank you, Governor.

We now would recognize the senior Senator.

Mr. CHENEY. I simply want to ask that the chairman recognize, first of all, Senator Malcolm Wallop, our senior Senator from Wyoming, and let our junior Senator, Al Simpson, follow. I do have a statement.

STATEMENT OF HON. MALCOLM WALLOP

Senator WALLOP. Thank you very much.

And, Congressman Cheney, thank you.

Mr. Chairman and distinguished members of your subcommittee, I welcome the opportunity to testify before you today on the various proposals to limit the State coal severance taxes. I can't say, however, that I am particularly glad to be here.

Since the 1973 Arab oil embargo, Wyoming has made a herculean effort to produce energy. The Governor spoke of a 1,000-fold increase in coal production in a decade in Wyoming, and this is domestic energy that is desperately needed to extract ourselves from a quandry shared by citizens and elected representatives of all States.

Indeed, I use the term "success" in loose terms, for to achieve this goal the social and environmental fabric of my State has been turned topsy-turvy. Needless to say, there are many who would quarrel whether it has been worth the price in terms of the quality of life that was once Wyoming.

That outcry has increased in recent months, thanks to some Members of the House and the Senate who have sought to further exacerbate the sacrifices and fuel the controversy. Now, as a commendation for more mineral production, the people of Montana and Wyoming are forced to defend themselves against misrepresentation, inequities, deceptions, and baseless suppositions that have been strung together to justify the legislation before this committee today.

We have been misrepresented as blue-eyed Arabs and domestic OPEC's. Yet, unlike OPEC, our coal contracts are negotiable, dependable, and enforceable in a court of law. The Btu cost of coal is significantly less than either oil or natural gas. We don't control the market but share in 9.3 percent of the Nation's coal production. The equity lies in the fact that the legislation is drafted to focus only on two States: Wyoming and Montana. It addresses only coal severance taxes which comprise but 8 percent of the total severance taxes collected in the United States.

It is a deception inasmuch as it portrays Wyoming as having 17-percent severance tax when, in fact, we levy only a 10.5-percent severance tax.

This deception is furthered by failing to explain that the 10.5-percent tax is levied only on a small part of the delivered cost of the coal. Cost of crushing, screening, oiling and loading, transportation from the mine to the loading area and railroad shipping charges are excluded in determining the taxable value of the coal.

While Senator Simpson and Congressman Cheney will address other aspects of the severance tax issue, my testimony will center on the two suppositions most often cited to legitimitize this precedent-setting legislation.

The first jutification is that our severance tax is an impediment to achieving national coal production goals.

The second is that these taxes present an undue burden on consumers.

A cursory examination of production figures should quickly dispel the first argument. In 1973, Wyoming produced 14 million tons of coal. Yet by 1979, after the enactment of the severance tax, that figure jumped to 72 million tons—a whopping fivefold increase. Production is estimated to double again by 1983, lending little credence to the argument that the tax is an excessive burden.

The impediment argument is further weakened by reviewing the findings from the President's Commission on Coal. After an exhaustive 2 years of research, the Commission made its report to the President in March of this year. Absent from that report was any indication that severance taxes were an impediment to further coal development.

The unfair-burden-on-consumers argument is also bantered around with equal fervor. Yet, once again, it lacks supporting data. A recent Congressional Research Service issue brief entitled "Energy: State Severance Taxes," revealed that Montana's 30-percent severance tax contributed only 3.6 percent to the end-use cost of energy to the consumer.

A subsequent report requested from my office revealed the Wyoming rate to vary according to Btu content between 2.5 percent and 1.3 percent using the misleading 17-percent figure and range from 1.5 percent to 0.8 percent, using the correct 10.5-percent number.

Oddly, the State of Louisiana, which has three cosponsors on H.R. 6625, led the list. Their 12.5-percent severance tax on oil contributed 7.2 percent of the end-use electricity cost for an oil-fired powerplant.

The average residential consumer had a yearly electrical bill of $356. Assuming the highest CRS estimate of 2.5 percent for the end-use impact of Wyoming taxes, that represents about $8.92 a year. That is 74 cents a month and 2.4 cents a day. If this legislation were enacted and mineral taxes lowered from the deceptive 17 percent to 12.5 percent, the savings would be less than a penny per day.

Moreover, the debate on shifting tax burdens and consumer impacts is meaningless unless it is examined against the practices of all States. For example, in 1977 California led the Nation in exporting $5.7 billion for 24.8 percent of their total State taxes. Illinois, which has five cosponsors on H.R. 6625, sent more than $2.5 billion across interstate lines. That is 26.2 percent of total State taxes.

Michigan had $2.4 billion or 31.2 percent of their total. Much farther down the list were Montana and Wyoming. In 1977 Montana exported $147 million in taxes or 25.4 percent of total State taxes. Wyoming's figure was $101 million or 25.1 percent of total State taxes.

Because of the messy business of comparing theory with the real world, the numbers themselves have to be viewed with skepticism. What the analysis does show is that all States export taxes and the relative character of those shifts do not vary that much. Clearly, the taxing policies of Montana and Wyoming are not out of line with those of other States.

Although I take strong exception with the means, I have no quarrel with the ultimate motives of the cosponsors. I believe they are legitimately concerned over the well-being of their constituents. The people of Wyoming, who, incidentally, pay these same severance taxes, have also seen the pinch of inflationary times reflected in their monthly utility bills. There are some constructive and worthwhile alternatives:

First, all Governors and State legislators must take a close look at how the State taxes electrical consumption. Many States, for example, levy gross sales taxes on electrical consumption which far exceed any burden placed on the consumer by western severance taxes.

Second, there must be a renewed Federal and State scrutiny into how the electrical utilities, themselves, do business. Three areas of concern are: The way they use the automatic fuel adjustment clauses, the construction work and progress clauses, and the so-called phantom tax.

In 1977 alone, utilities received more than $11 billion in revenues in automatic fuel adjustment clauses. Undoubtedly, that figure has now skyrocketed. These increases were granted without benefit of evidentiary hearings where intervenors and commission staff could challenge, question and counter utility proposals.

These fuel adjustment clauses allow the immediate recovery of fuel costs and therefore limit the incentive for utilities to bargain for good fuel prices. Furthermore, they tend to encourage the construction of plants that are fuel intensive rather than capital intensive.

Another handy mechanism is the construction-work-in-progress—CWIP—clause in the rate base. This mechanism permits the utilities to charge today's consumers for plants that they are building for the future. Again, there is little incentive for efficiency, since ratepayers are already picking up the cost. In addition, many of those ratepayers will have moved away from the area by the time the facility is completed and, as such, get little benefit.

Perhaps the cleverest sleight-of-hand is the phantom tax. Under this method, utilities use accelerated depreciation and the investment tax credit to defer to reduce their tax payment. On the other hand, the utility computes its tax burden into the rate base as though straight-line depreciation was used. Electric utility industry spokesmen, themselves, estimate that this so-called phantom tax leaves utilities an extra $3 billion annually in "internally generated funds."

Mr. Chairman, the framers of Wyoming's State constitution would be awed at the proceedings here today. Prior to our entry into the Union in 1889, coal taxes were a controversial issue. Proponents of the tax argued that a 1.5 cents per ton coal tax should be put in the constitution. The president of the convention reported that the territory spent $3,000 per year for a coal inspector and coal engineer, but only received $1,250 in taxes from the industry.

Opponents argued that a production tax on coal would bring in more money than the State could use, the infant coal industry would be discriminated against, the tax would not be passed on to the miner and the consumer, and such a tax would discourage capital investment. The opponents won and the coal tax was omitted.

Today, Wyoming's coal industry is alive and healthy, thanks in part to severance taxes. A cooperative climate prevails and the industry has been accepted as good corporate citizens. It is therefore of utmost importance that the members of this subcommittee look at the evidence and the rhetoric of utilities who are anxious to lynch our severance taxes as an answer to their own woes. It won't work. Consumer bills won't decline and the ill will your actions would cause would never be repaired.

Most importantly, as Congress focuses its enormous powers on two States which are represented by only 7 of the 535 Members of this body, I hope you will all weigh carefully the words of James Madison in Federalist No. 63:

> So there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, are misled by the artful misrepresentations of interested men, may call for measures which they, themselves, will afterwards be the most ready to lament and condemn. In these critical moments, how salutatory will be the inference of some temperate and respectful body of citizens, in order to check the misguided career and to suspend the blow mediated by the people agaist themselves, till reason, justice and truth can regain their authority over the public mind?

Thank you.

Mr. Sharp. Thank you.

The junior Senator from Wyoming, Mr. Simpson, please.

STATEMENT OF HON. ALAN K. SIMPSON

Senator Simpson. Thank you very much, Congressman Sharp. I have enjoyed working with you in our various nuclear efforts.

Well, now, you are getting the third member of the batting order here. Mr. Herschler is the leadoff; Mr. Chaney in cleanup; and I hope you hear it all and hear it carefully and that the record will be complete.

I appreciate Congressman Dingell's holding this additional hearing. He indeed is a forceful and effective member of this body. He was kind to show the willingness to give us this additional hearing. We appreciate that courtesy.

Well, you have heard our Governor; he is one of your faith, politically. The four of us often work very closely together, obviously, and are close personal friends. We served together in the legislature, Ed Herschler, myself, and Malcolm Wallop. Much progressive legislation was enacted during those years, which all of us signed and cosponsored.

For example, the mineland reclamation laws, the air quality laws, land-use planning, water quality—because we were going to school on the other guy's shot. We had seen what happened in Pennsylvania, West Virginia, and we are not going to allow that to happen in the State of Wyoming, and we still won't.

We have honest differences among us, all of us, Dick, Malcolm, Ed, on the amount of severance tax—but not on the State's right to levy it.

The most careful debate that is ever conducted in any legislative session in Wyoming is always about the mineral severance tax.

And there is a reason for this. We want to know if it is fair, if it is a burden, if it is adequate, if it is too much on one mineral, too little on another, is it injuring the market, is it hurting consumers, is it driving out corporate entities from our State?

All of those factors are the things we talk about. We are bound to. That is what it is all about.

And now, Wyoming and Montana and maybe North Dakota, with our band of raggamuffins, are here on the Hill, warding off this particular measure. And there will obviously be the comment, "Well, you know, why shouldn't they shriek?"

But there is more to it than that. Not only is it a terrible intrusion upon the right of a State to tax, which I think could open up a whole bag of issues that would just appall this body when we get into regional taxation. Such as, whether you buy a car in Detroit, made in Detroit, or whether you purchase it in Wyoming—are they not doing unto us what we are supposedly doing unto them?

It is a bad precedent. It won't hold.

Obviously, we are trying to determine what are the things that drive up the costs of coal. The severance tax is peanuts, absolute peanuts. What drives up the cost of coal are items like mining costs, revegetation, reclamation, Federal taxes, labor contracts, labor pensions, freight rates, black lung payments, return on investment, and then whip in the rest of the rate structure on electricity and imagine what it is to fold such factors into the rate system of a 1,000-megawatt plant that costs $1.5 billion to construct? That is the kind of stuff that drives up the cost of electricity.

Add to that the State and local taxes on electricity, pollution control costs, labor union contracts and, again, return on investment, which is still something we all hopefully believe in. We find this extraordinary computation that on a per million Btu basis, the Wyoming severance tax of 10.5 percent is something between 1.5 percent and 2 percent, depending upon the grade of coal.

That is a fraction of the per kilowatt-hour cost of electricity. It is absolutely minuscule. There is no other way to describe it.

So, if we are going to get the juices of the constituents going in remarkable form, then you are going to have to think of a better way to do it than this kind of legislation, because they are going to be plenty frustrated by the song and dance that this is going to do anything to their consumer utility bill. Any figure we will use will show that net savings are something between 25 cents a month and 72 cents a month. No one has ever expanded on that. If they have, please share that information with me.

What we are seeing here is a very simple reaction. We see utilities of America who are so tired of their consuming customers raising hell with them that they have decided to point their boney fingers to the west and say that we did it. And it just won't sell.

The State severance tax on coal is the same tax we in Wyoming pay on what we use locally. There is no discrimination on coal exported from Wyoming. We are not setting up the rest of the people of America. We pay the same charges in Wyoming that you pay in the rest of the country.

The claim of this consumer-oriented bill, which is, I guess, simple protectionism, is actually, I think, one of the hollowest since I have come here. The real issue, as Senator Wallop has discussed, and the point supporters can't seem to get around because their own people negotiated it and it is embarrassing, the concern is obviously and excessively with existing coal contracts and their passthrough clauses as well as the escalation features of those contracts.

Additional costs the utilities bear for various items like black lung benefits, reclamation projects and other regulations under Federal legislation is what has caused the utilities to whip up this transparent assault on the tax structures of the sovereign States where those resources are produced.

As I say, to me it is one of the most hollow arguments I have heard since coming to Congress, but that is only 18 months, and I am sure I will hear a lot more.

Mr. SHARP. I am sorry. We have a recorded quorum that will become a vote in a few minutes. I am afraid we will have to break.

We would be delighted to hear more from you, if you don't mind waiting.

Senator SIMPSON. I have 10 seconds. I am sure it won't sell in the package it is in, and it should not. It is a good way to vent some good old frustration, but it won't match the frustration of the voters when they see absolutely no results in their electric bills.

[Testimony resumes on p, 172.]

[Senator Simpson's prepared statement follows:]

STATEMENT OF SENATOR ALAN K. SIMPSON OF WYOMING

MR. CHAIRMAN: I appreciate the courtesy your committee has extended to the members of the Wyoming delegation to appear before you today on the continued hearings you are holding on H.R. 6625 and H.R. 6654 which have been referred to your committee. The single purpose of my testimony this morning is to respond to the overgeneralized assumptions and incorrect information that has been presented regarding the purpose and rate of mineral excise taxation on coal resources levied by the State of Wyoming. I would first point out to the members of this subcommittee that the people of Wyoming and the Wyoming legislature have made no conscious permeditated, deliberate or devious effort to levy mineral excise tax on coal resources in order to inflict an unfair burden on electrical rate payers in other states. The present rate of the coal mineral excise tax in Wyoming was set in 1977 at 10.5 percent and it continues at that rate—not the 17 percent figure. As often stated by others who have previously testified, including, the sponsors of this legislation.

Mr. Chairman, the most important objection which I raise to this legislation is the possible adoption of a dangerous national precedent. If Congress acts to restrict the amount of taxation which mining states are able to levy on coal resources, then it would assuredly follow that Congress also act under its broad plenary commerce powers to restrict the level of taxation in the farm belt states, the manufacturing states, the timbering regions of this country and any other state which sustained within its borders a form of regional or national center of production.

Mr. Chairman, as an active member of the Senate Judiciary Subcommittee on the Constitution, I have had numerous occasions to review legislation that proposes changes in that most basic charter of individual liberties and the pattern for our federal system of government—the Constitution of the United States.

Under the exercise of its enumerated powers, specifically the commerce clause of the Constitution, Article 1, Section A, Clause 3, Congress does have the necessary grant of authority and the plenary powers to act in a manner that is required to assure that no undue burden on interstate commerce—imposed including marketing of coal resources, Plenary authority, to quote the words of Mr. Chief Justice Marshall in *Gibbons* v. *Ogden*, as he defined the power to regulate it, "is the power to prescribe the rule by which commerce is governed." The only limitation which the United States Supreme Court has placed in the path of the Congress' regulation of interstate commerce has been the requirement that "the chosen means by (Congress) must be reasonably adapted to the end permitted by the Constitution".

I can not in any way perceive how any such enactment would be fully within the grant of legislative authority contained in the commerce clause, and thus if accepted, I feel this legislation would be invalid. This legislation suffers from the constitutional informity of attempting to regulate the activity of states—in their authentic and legitimate activities as states—by means of the commerce power.

Sponsors purport to beseech Congress to wield its commerce power in a fashion that would drastically impair the ability of the western states to function effectively within a federal system. This exercise of Congressional authority certainly does not comport with the federal system of government as embodied in the Constitution.

Of the 10.5 percent of state mineral excise tax which Wyoming has adopted, fully 6.5 percent goes directly to "earmarked" accounts that are specifically targeted for the purpose of relieving the various problems that are directly or indirectly associated with the rapid industrialization of Wyoming energy development. These coal tax revenue finance such traditional government functions as the construction of public utilities, providing for public health and recreation, developing of water resources, and the building of highways and bridges. Certainly any attempt by the federal government to limit the ability of the state to respond to these dramatic social, economic and environmental impacts would fly directly in the face of the federal system of government—as envisioned by our Constitution. On this point alone the proposal is fatally flawed since is it not a proper exercise of the enumerated powers which Congress has prescribed to override state sovereignty when exercising its otherwise plenary powers to tax or regulate commerce. I should also point out that the severance tax structures of both the state of Wyoming and the state of Montana do not impose a tax burden that discriminates against "out of state" coal users in favor of its own residents or their local economies.

In testimony before this subcommittee Hubert H. Nexon, Senior Vice President of Commonwealth Edison Company, who is also President of the National Coal Consumers Alliance, decried the process of allowing state severance taxes to be passed on to electrical users in coal consuming states. But I would point out to this committee that it is a fundamental principal of equity that those individuals who benefit to the greatest degree, and in the most direct fashion, do indeed have the responsibility of assuming the burden of paying for those benefits. An application of that equitable principal to this situation would assure that those electric rate payers who benefit from power generated from the combustion of coal resources mined in another state would assume a portion of the cost of providing for those fuel resources. The social and environmental costs which western states are expected to bear in the development of coal within the scope of a national energy policy are physically visible to anyone who has seen the surface mines, power plants, coal unit trains, trailer camps and the modular schools in my own state and neighboring areas in Colorado, Montana and North Dakota. The graphic and principal costs of this growth are being borne by producing states and the mineral severance tax only assists in distributing a small portion of those costs to the consuming states. The commercial relationship between the coal company, the utility and the state regulatory commission, in conjunction with the fuel supply agreements and automatic fuel escalation tariffs are what provide for the direct pass through of those costs and expenses.

Over the years several studies have been performed on the "political economy" of tax shifting or tax exportation which various states may be able to produce within the overall structure of their state tax systems. In fact it would appear that many bureaucrats and politicians ascribe to the philosophy that it is their "responsibility" to shift as much tax burden as is possible from the residents to nonresidents. Before this committee wishes to continue in efforts that will only lead America into the twilight zone of federal preemption by prescribing the limits which any sovereign state may go to in its own tax efforts, I would wish to insert for the record a table from the statistical abstract of the United States as prepared by the Department of Commerce on tax exportation.

LONG-RUN TAX EXPORTATION

[Dollars in millions]

State	1977 population in thousands	1977 tax exportation
California	21,896	$4,781.6
Florida	8,452	1,082.6

LONG-RUN TAX EXPORTATION—Continued

[Dollars in millions]

State	1977 population in thousands	1977 tax exportation
Illinois	11,245	2,082.2
Michigan	9,129	1,716.8
Montana	761	124.2
Nebraska	1,552	290.0
Nevada	683	187.1
North Dakota	653	85.4
South Dakota	689	70.8
Wisconsin	4,651	741.1
Wyoming	406	91.5

Source: Population estimates from Statistical Abstract of the U.S. 1978, U.S. Department of Commerce, Bureau of Census, 1978.

I find it fascinating that those states which have been the most successful—yes—that is the term to be applied!—in exporting their tax burden to nonresidents are composed of those states which rely chiefly on coal from states of Wyoming and Montana. Those states are Illinois, Michigan, and Wisconsin. This is a telling review and a factor that certainly must be borne in mind by those who propose to launch this step into the bold new world of central economic planning by the federal government. Tax exportation is certainly a most wellknown phenomenon in public finance and I find it extremely interesting that the President of the National Coal Consumers Alliance, for all his obvious business acumen, is making claims to the contrary in his earlier testimony.

I further contend that those members of the National Coal Consumers Alliance who support this legislation are not those who are most concerned about the ability of Western coal to play a significant role in meeting our critical needs under the present national energy policy being propounded by Congress. Rather, their concern is obviously and obsessively with the existing coal contracts and the "pass-through" clauses and escalation features of those contracts. The additional cost that utilities must bear for various items such as black lung benefits, reclamation requirements and other regulations under federal legislation in what has caused them to gin up this transparent assult on the tax structures of the sovereign stats where these resources are produced. It won't sell.

I would also wish to direct members of this committee to a report that Data Resources, Inc. has issued which estimates that the cumulative privated sector costs of complying with regulations pertaining to coal development will be $58.74 billion from 1979 through 2000. This analysis suggests that there is a need for a truly comprehensive governmental policy towards the development of coal rather than the piece-by-piece regulatory approach that has been practiced. The extreme uncertainty in the development of federal coal resources can be traced to actions at the federal level, particularly the failure of the initial environmental impact statement on coal leasing to be able to withstand the judicial challenge in the case of NRDC v. Hughes. Only recently has the Department of Interior been able to devise a preferred alternative for coal leasing that is "acceptable" to environmental concerns and now this untested program will not be fully operational unit 1981—while our President cries out for full coal production. I think it most important that you be aware that in the extensive final environmental impact statement on federal coal development released in April, 1979—in the section of that report which addressed the critical issue of state policies and legislative actions that could possibly become constraints on the development of coal resources in Western regions—not once was the effect of state mineral severance taxes identified as a relevant factor. I would note that the report also stated "given the high probability of increasing coal development activities throughout the coal regions in the United States in the near future, it is unlikely that state governments will attempt to block this activity unless the quality of environment or health and safety of their populations are in clear danger, although some states have adopted somewhat more stringent environmental standards, a spirit of cooperation is apparent throughout the state and federal legislation."

Mr. Chairman and members of this committee, the one area where the states are most adamant is the ability of the state to develop revenue to meet the needs of the burgeoning population. To continue to quote from the report it was stated that "unless communities and local governments can be guaranteed that they will not suffer the ultimate cost of coal development, they are likely to take a more conservative position toward the development than the states or federal government."

Mr. Chairman, to adopt this legislation could be tantamount to drawing the battle lines for just such a response in coal producing regions. To posture before the electric rate payers of this country that this legislation will make coal more available and reduce their costs is the most extremely cynical and hollow promise I have yet heard since coming to this Congress. Passage of this bill won't produce results or relief the consumer will ever enjoy.

Preemption of the ability of states to function within their most traditional areas of public finance can only produce an extremely negative and uncooperative atmosphere for coal development that certainly be counterproductive to our overall energy policy mission.

Mr. Sharp. Thank you.

We will take a break for 15 minutes.

[Brief recess.]

Mr. Sharp. The subcommittee will come to order.

We would be happy to hear now from Representative Cheney.

STATEMENT OF HON. RICHARD BRUCE CHENEY

Mr. Cheney. Thank you, Mr. Chairman.

Let me add to the comments that have been expressed previously, already, by other members of the delegation in terms of thanking you and the chairman for agreeing to hold this hearing today. I think you can tell how important this subject is to the State of Wyoming by virtue of the fact that you have today before you not only the Governor, who is a Democrat, but also the entire congressional delegation, small though it may be, all Republicans.

It is a subject extremely important to the State. I will try to keep my comments fairly brief.

I would like to touch on one or two subjects that my colleagues have not mentioned. I do have a formal statement that I would like to submit for the record at this point.

Mr. Sharp. If I may say, without objection, your written statement will be made a part of the record. [See p. 175.]

Mr. Cheney. Let me touch just a moment, if I may, on a subject of what it is that Wyoming does with its revenue and why it is we feel we need it so badly. I think it is very difficult for people who don't live in a State like Wyoming, or in an area that is very large but very sparsely settled, where our communities are 2,000 or 3,000 or 4,000 people, to understand what happens to a community like that as the result of the enormous pressure that is being generated on the State for the development of our energy resources.

The fact is, Wyoming is only one of two States in the Nation that produce more than four times as much energy as it consumes, Louisiana being the other one; that the projections for future growth and development in the State, given our coal and uranium and oil and gas resources, are unbelievable.

We start with a very small base, but population and percentage increases that are having to be adjusted to by the State are considerable.

Let me give a few examples, if I might. According to a study done for the Old West Regional Commission, Wyoming's population in 1978 was estimated at some 450,000 people. That was a 37-percent increase in 8 years. By 1985, just 5 years from now, our population is projected to be 560,000. That will be a 23-percent increase in about a 5-year period of time. Of the 23 counties in

Wyoming, 12 bear most of the brunt caused by energy development. In those 12 counties the population is expected to increase by 31 percent by 1985, an annual average growth rate of 4.5 percent.

The U.S. Department of Energy considers a 3-percent average annual growth rate to cause severe impacts and a 5-percent average annual growth rate to cause critical impacts in sparsely populated areas such as Wyoming.

I hope the subcommittee recognizes the enormous revenue needs of States such as Wyoming which have only limited government services to begin with, very small populations, and which must pay premium prices for new facilities and services demanded by the rapid pace of development forced on us by national energy policy. The fact that we are so sparsely settled means that the new influx of people and businesses causes far greater problems than it would in most populated areas. Most, if not all, of our communities do not have the infrastructure needed to accommodate this kind of growth.

There are areas which are experiencing far more rapid growth than what the Old West Regional Commission report indicates.

Let's take the town of Gillette, Mr. Chairman. I believe they have extended an invitation to have you visit, and we would like to renew that invitation today. Gillette is a town in northeastern Wyoming in an area known as the Powder River Basin. It is one of the largest areas producing coal mining. In the United States 10 years ago there were two strip mines producing 200,000 tons of coal a year. Today there are 8 mines, producing 35 million tons of coal per year; by 1985 it is estimated that there will be 16 mines producing 100 million tons of coal in a year.

So, in a 15-year period of time we have grown from 200,000 tons annual production to 100 million tons annual production.

The city of Gillette's population between 1976 and 1979 grew by some 40 percent in 3 years. Estimates show that Gillette will have to accommodate 30,000 people by 1985 if these 16 mines are going to operate. That would amount to a 300-percent increase in population in just 9 years, and Gillette is not an isolated case.

If we look at the city of Evanston in the southwest corner of the State, a small community of 7,500 now; it faces an average annual growth rate of 29 percent because of the oil boom in the overthrust belt. This one community needs 800 new single-family homes or apartments within the next year; they need 1,800 trailer court lots now; they need new sewer system improvements immediately; they need additional well and water storage facilities, a new police building, a new jail, additional police officers, a brand new hospital, new doctors, a 15-percent cost-of-living increase for the employees of the town.

If they can't pay it, they will lose the employees to the oilfields. New schools are needed, two new middle schools and a new high school within the next few years.

The towns of Sheridan, Gillette, Moorcroft, Buffalo, Casper, Rawlins, Rock Springs, Green River, Lander, Cheyenne, and a host of other towns experiencing similar needs, I believe one begins to realize what our severance tax revenues are required for.

Faced with spiralling increases in energy production and population growth and with the type of demands I have just outlined, Wyoming has laid plans to avoid the errors made by previous industrialized areas during the course of their development. In this regard, we have created our permanent mineral trust fund to set aside some of the irretrievable value of the energy resources for use by future generations after those resources have been exhausted.

I am sure today Appalachian mining communities wish they had created such a fund to repair the scars of mining and to provide new life for their stagnated economies in the years ahead.

Wyoming's trust fund is a sound investment in the future made by a prudent people. Wyoming now has strict but reasonable controls over the course of development through a siting act and environmental standards, and it seeks assurance through the severance tax that development will pay its way.

Yet this Federal legislation that is proposed, if passed will mean the loss of hundreds of millions of dollars of needed revenue to the State of Wyoming and may mean the failure of the State's strategy for controlling the impact of development.

The prospect of such a failure raises a key question for national policy: Will Wyoming and the other energy-producing States be willing partners in energy development, or will they be reluctant adversaries of such change?

I thank you for the courtesy you have extended to all of us. I would strongly urge the members of the subcommittee to give second thoughts before they embark upon the course of action embodied in this legislation. I do think it would be extremely harmful from the standpoint of future energy policy for the country.

Finally, I think it is an extremely bad precedent to set to initiate this kind of Federal intervention in State taxing authority.

With that, I would be happy to conclude my remarks.

[Testimony resumes on p. 190.]

[Mr. Cheney's prepared statement follows:]

STATEMENT BY
CONGRESSMAN DICK CHENEY
BEFORE THE
ENERGY AND POWER SUBCOMMITTEE
THURSDAY, JUNE 5, 1980

Mr. Chairman, I appreciate this opportunity to appear before this Subcommittee to present my views on proposed Federal limitations on state severance taxes. I obviously speak in opposition to the bills introduced by Representative Sharp and others limiting state coal taxes.

I realize that this Subcommittee has already gathered testimony from interested parties on both sides of this issue. In my remarks today, I do not wish to seem repetitive; however, in reviewing the transcripts from the Subcommittee's previous hearing, I felt a number of nagging questions about this legislation had gone unanswered.

ARE THE TAXES IMPOSED BY WYOMING EXCESSIVE IN COMPARISON TO THE TAXES LEVIED ON OTHER MINERALS BY OTHER STATES?

In introducing legislation limiting state severance taxes, the proponents of these bills have charged that Wyoming and Montana taxes on coal are excessive, exorbitant, or impose too great a burden on the consumer. Figures from a number of sources contest this assertion and, in fact, generally conclude that

Wyoming and Montana severance taxes impose less of a burden on the consumer than many other states' taxation levels on oil and natural gas.

I have compiled for the Subcommittee's review, figures which compare Wyoming's 17% tax on coal (combined severance tax rate of 10.5% and ad valorem tax rate of 6.5%) to Texas' 4.6% on oil (Table I). The results show that Wyoming's tax imposes less of a burden on the consumer's end-product cost than does Texas' tax. In making this comparison, it also holds true that for any state with an oil tax rate approximately equal to or greater than Texas' tax, the burden imposed by that oil tax will be greater than that imposed by Wyoming's coal severance tax. Those states include: Alabama, Alaska, Arkansas, California, Florida, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, North Dakota, Oklahoma, and South Dakota. Wyoming's severance tax on coal imposes a cost on the consumer of between $6-7 a year or about 1.7% of the consumers total yearly utility bill of $390.00. My figures are substantiated by Mr. Larry Parker of the Congressional Research Service in a report showing that Wyoming's tax imposes a burden of between 1.3% and 2.5% of the consumers end-product cost depending on the price per ton of coal and its Btu content.

In a separate study done by Mr. Parker, he compared the highest severance tax rates imposed on each of the three major resources; Montana's 30% tax on coal, Louisiana's 12.5% tax on oil, and Alaska's 10% tax on natural gas, and compared the ultimate burden each tax imposed on the consumer's end-product cost. His figures show that Montana's tax comprises about 3.6% of the consumer's end-product cost, considerably lower than the burden imposed by Louisiana's tax on oil or Alaska's tax on natural gas. I quote from the study, "While these numbers should be considered "ballpark" in nature, they do indicate that Montana's severance tax does not impose any more of a burden on other states than severance taxes on oil and gas from the perspective of the end-product that the consumer actually uses." I totally agree with Mr. Parker's findings, especially considering the fact that the burden imposed by Wyoming's tax is considerably lower than that of Montana's. I would, however, like to point out a couple of minor discrepancies in the numbers Mr. Parker uses. The price he uses for coal is $12 per ton, whereas, the majority of coal leaving the Powder River Basin in Wyoming and Montana sells for $6-8 per ton. This would show an even more positive bias toward coal. Also, Mr. Parker's numbers do not take into consideration the effect price decontrol will have on oil prices.

You'll notice in the analysis I conducted that I show three different levels of oil pricing; $10 per barrel, $15 per barrel, and $20 per barrel, and the effect the price of oil has on tax revenue and consumer burden. It is obvious from my figures that as oil prices increase, the amount of tax revenue flowing into the large oil producing states will dramatically increase along with the subsequent burden imposed on the consumer. This fact is further substantiated by a report published by the Northeast-Midwest Institute which concludes that state and local tax revenues will increase by $127.7 billion between 1979 and 1990 as a result of the phased decontrol of oil prices. Four states, Texas, Alaska, Louisiana, and California, will receive over 83% of the new revenue. The study points out the revenues will gain primarily from three sources:

1) local taxes keyed to the dollar value of the oil pumped from the specific jurisdiction (principally severance taxes and royalties).
2) increased corporate profits as a result of higher oil prices (principally corporate and personal income taxes).
3) increased value of land and equipment associated with the increased price of oil (principally property taxes).

Currently Texas, Louisiana, and Alaska collect a total of $1,710,824,000 out of the $2,893,148,000 collected by all the states. That's 60% of the total or twelve times the amount collected by both Montana and Wyoming together. As Mr. Parker of the Congressional Research Service points out, "Texas will collect about $1 billion in oil and gas severance taxes for 1979, approximately 40% of the total severance taxes collected. In total, oil and gas severance taxes account for over 85% of all severance taxes compared with 8% for coal. With the eventual deregulation of oil prices, the severance tax revenues of oil producing states should increase dramatically over the next few years." One other interesting thing to note is that in 1979 Minnesota's severance tax on its iron ores, taconite, semitaconite and iron sulphides, amounted to more in total dollars collected than did Montana's tax on coal.

WHAT ABOUT THE TRANSPORTATION COST ASSOCIATED WITH COAL?

Congressman Gramm previously questioned the validity of studies comparing coal and oil tax rates because of the transportation cost associated with coal. I would like to point out that the transportation cost is a totally separate component of coal's final cost to the utility and does nothing to affect the actual amount of burden imposed on the consumer by Wyoming's tax. Afterall, Wyoming's tax is imposed only on the cost of the coal at the mine, not on the transportation charges.

Another interesting thing to notice from the figures I have compiled is the comparison of fuel costs including taxes required to produce 8500 KWH of electricity. The cost of coal is $45.86 compared to $153.98 for $10 per barrel oil, $230.97 for $15 per barrel oil, and $307.96 for $20 per barrel oil. Even considering transportation charges of $20 per ton, coal is still cheaper than oil at all three price levels.

DOES WYOMING NEED THE AMOUNT OF REVENUE GENERATED BY THEIR TAX ON COAL?

Wyoming and other Western states are today at the edge of an era of explosive energy development which will radically change the traditional way of life of many people in my state. According to a study done for the Old West Regional Commission, Wyoming's population in 1978 was estimated at 450,000 people, a 37% increase since 1970. By 1985, Wyoming's population is projected to be 560,000, a jump of 23% over the 1978 figures. Of the 23 counties in Wyoming, 12 of them bear most of the brunt caused by energy development. In those 12 counties, the population is expected to increase by 31% by 1985, an annual average growth rate of 4.5%. The U. S. Department of Energy considers a 3% average annual growt rate to cause "severe" impacts and a 5% average annual growth rate to cause "critical" impacts in sparsely populated areas such as Wyoming.

I hope the Subcommittee recognizes the enormous revenue needs of states, such as Wyoming, which have only limited governme services and small populations, and which must pay premium prices for new facilities and services demanded by the rapid pace of development forced on them by national policy.

The fact that Wyoming is so sparsely settled means that the new influx of people and business causes far greater problems than it would for more populated areas. Most, if not all, of Wyoming's communities do not have the intrastructure needed to accommodate this type of growth.

There are areas which are experiencing far more rapid growth than what the Old West Regional Commission report indicates. Take the town of Gillette, for example. Gillette is a town in northeast Wyoming in an area known as the Powder River Basin. This basin is one of the largest areas conducive to coal mining in the United States. Ten years ago, there were two strip mines in this area producing about 200,000 tons of coal per year. Today, there are eight strip mines in the area which produce over 35,000,000 tons of coal per year. By 1985, it is estimated that there will be 16 coal mines producing over 100,000,000 tons of coal per year. The city of Gillette's population in 1976 was approximately 10,000 people and by 1979 the city had grown to about 14,000 people, an increase of about 40% in three years. Estimates show that Gillette will have to accommodate 30,000 people by 1985, if these 16 mines are going to operate. This would amount to a 300% increase in population in just nine years, and Gillette is not an isolated case.

Five years ago, Evanston was like many small rural communities across the nation. The southwestern Wyoming town suffered from economic stagnation and out-migration of its young people. That was before the Overthrust Belt was discovered. The Overthrust Belt is a geographic formation which stretches from Alaska down America' Rocky Mountain spine to Mexico and has been dubbed the last frontier for oil and natural gas in the lower 48 states. Evanston sits right in the middle of it.

Since 1975, Evanston has grown by 3000 people to a present population of about 7500. By year end, Evanston will have more than 9600 residents, an annual growth rate of 29%. Officials say the community has the following needs:

* Eight hundred new single family homes and apartments within the next year in addition to about 1800 trailer court lots now on the drawing boards. Housing is so tight that entire families must live out of a single motel room for months. For others, the autos that by day transport workers to jobs become kitchens and bedrooms at night.

* 300,000 in sewer system improvements needed immediately.

* 100,000 for additional wells and water storage.

* 600,000 for a new police building to replace an overcrowded public safety building and jail shared by the police and the Uinta County Sheriff's Department.

* Six additional police officers. Experienced law enforcement officials are leaving the already undermanned county and city departments to make more money in the oil fields.

* $7 million to $8 million for a new hospital.

* Four additional doctors including an orthopedic surgeon, obstetrician, internal medicine specialist and pediatrician.

* $150,000 for a 15% cost-of-living increase for the employees of the town, which can't compete with the higher salaries offered by the oil business.

* New town employees such as an engineer and full-time planner.

* A new elementary school and temporary classrooms, for which a $10 million bond issue was defeated last year. Ten to 18 new teachers for the term beginning this autumn as well as 40 school buses.

With the towns of Sheridan, Gillette, Moorcroft, Buffalo, Casper, Rawlins, Rock Springs, Green River, Kemmerer, Riverton, Lander, Cheyenne, and a host of other towns experiencing similar needs, I believe one begins to realize what Wyoming's severance tax revenues are used for. Faced with spiralling increases in energy production and population growth and with the type of demands I have just outlined, Wyoming has laid plans to avoid the errors made by previous industrialized areas during the course of their development. In this regard, Wyoming has created a Permanent Mineral Trust Fund, to set aside some of the irretrievable value of its energy resources for use by future generations after their resources have been exhausted. I am sure that today Appalachian mining communities wish they had such a fund to repair the scars of mining and to provide new life to their stagnant economies. Wyoming's trust fund is a sound investment in the future made by a prudent people.

Wyoming now has strict but reasonable controls over the course of development through a siting act and environmental statutes, and it seeks assurance through their severance tax that development will pay its way. Yet this Federal legislation, if passed, will mean the loss of hundreds of millions of dollars of needed revenue to the state of Wyoming and may mean the failure of the state's strategy for controlling the impact of development. The prospect of such a failure raises a key question of national policy: Will Wyoming and the other energy producing states be willing partners in energy development or will they be reluctant, but powerful, adversaries of such change?

IS IT UNFAIR FOR OUT OF STATE CONSUMERS TO PAY A TAX THEY HAVE NO VOICE IN SETTING?

In 1979, 17 coal companies produced 70 million tons of coal at 25 mines in the State of Wyoming. Of the total production, 52 million tons were shipped to consumers in the Midwest, Northwest, and Southwest. Wyoming's severance tax is levied on all coal equally, regardless of whether or not it is used in or out of the state. Therefore, Wyomingites bear the cost of development for the coal they use. Should Wyomingites also bear the cost associated with the development of the 52 million tons of coal they don't use? I don't believe so. Most Wyoming residents have no connection with the coal industry and will only see the costs of development in social disruption, air and water quality damage, congestion and inflation unless these problems are controlled. For this reason, it is only fair and reasonable to assume that the consumer of the coal should pay the full costs associated with its development.

The real issue raised by the proponents of this legislation is one of tax exporting. I would like to point out to the members of the Subcommittee that every state in the Union exports some of their tax burden in one way or another. Texas' 4.6% tax on oil is exported to whatever state purchases its crude. Michigan, through its production tax on automobiles, exports a significant amount of taxes to other states. Florida, sees fit to do so through a greater reliance on their sales tax which raises revenue from the many tourists that visit the state. As a tax expert in Florida observed, "We have done an excellent job of shifting a large portion of the tax burden to tourists -- the tax system is designed to tax service industries quite heavily." As all the members of this Subcommittee should realize, Washington, D.C. is an excellent example of tax exporting. If you live in Virginia, as I do, and do some of your shopping in the District, you can bet you contributed far more to the tax revenues of the District last year than the average electricity consumer in Texas contributed to Wyoming. In fact, the empirical evidence strongly supports the view that Wyoming and Montana "export" about the same proportion of their taxes to consumers elsewhere as do many other states, including Michigan, Illinois and Wisconsin.

As a study prepared by Mountain West Research, Inc. states, "The conclusion of this exercise is a simple, but very important fact. Tax exporting in a fiscal system based on federalism is a very pervasive phenomenon. Strong political incentives exist for political leaders to shift taxes to voters in other states. The evidence indicates that everyone is doing it to everybody."

DOES WYOMING'S TAX ON COAL HINDER PRODUCTION AND THEREBY THWART NATIONAL POLICY.

In 1970, Wyoming produced 7 million tons of coal per year. Today, Wyoming produces over 70 million tons of coal per year, a 1000 percent increase in ten years. Experts predict that by 1990 Wyoming's production will triple to over 200 million tons per year. Should those predictions materialize, that would mean that Wyoming's coal production would increase by 3000 percent in twenty years. Last year's national bituminous coal production totaled 724 million tons, exceeding demand by more than 50 million tons.

IS THE LEGISLATION BEFORE THE SUBCOMMITTEE CONSTITUTIONAL?

The proponents of this legislation have developed a rationale for support based on the Commerce or the Supremacy Clause of the Constitution. Such justifications ignore the facts I have presented in this testimony and ignore the direct conflict this legislation has with key state policies.

The fact is that, as the Attorney General of Montana stated in prior testimony before this Subcommittee, it will be extremely difficult to find sound precedent for these proposals. Federal government limitations in this area have largely been confined to the protection of Federal instrumentalities and the promotion of nondiscrimination in trade policy and taxation. The reason for this should be obvious: If the present proposal is constitutional, we face the possibility of a major shift in our Federal system in which states are gradually deprived of their power to tax. As the Subcommittee has heard, "The single most essential facet of a state's sovereignty is the power to tax." I hope the Subcommittee will approach this issue cautiously, and resolve any doubts about the constitutionality of the legislation against it. While at some point the level of taxation might become so high as to violate the Constitution, it seems prudent to leave resolution of this flexible boundary to the courts, which have historically resolved such disputes in a case-by-case manner fairly to all parties.

Finally, in summing up my testimony, I find that the proponents of this legislation have no basis in fact for their arguments justifying the need for a 12.5 percent cap on state severance taxes on coal. This legislation is the purest form of special interest accommodation I have ever seen. The National Coal Consumers Alliance, a group set up to lobby in support of this legislation, is comprised almost solely of utility companies. This legislation, if passed, will do almost nothing to relieve consumers of the growing cost of energy. What it will provide is a great public relations ploy for both the politicians and the utilities supporting this legislation; one that could not be obtained through any campaign or by any advertising scheme. What better way to appeal to the voter or consumer right now than to lead him or her into believing you are working to lower their energy bill.

I hope this Subcommittee will consider the long-term implications of this legislation, and defeat it.

Comparison of Coal and Oil taxes and their burden on the consumer.

COAL	OIL		
$8/ton = 16,000,0[illegible] Btus	$10/barrel= 5,800,000 Btus	$15/barrel	$20/barrel
X 37% [illegible] factor	X 34% conv. factor		
5,920,[illegible]	1,972,000 Btus		
	[illegible] barrels		
5,920,000 Btus	= 5,920,000 Btus		
$8 X 17% = $1.36 Total tax= $1.36	$30 X 4.6% = $1.38 $30 X 1 1/2 mills = 4.5¢ Total tax = $1.425	$45 X 4.6% = $2.07 $45 X 1 1/2 mills = 6.75¢ Total tax = $2.1375	$60 X 4.6% = $2.76 $60 X 1 1/2 mills= 9¢ Total tax = $2.85
$.000784 / KWH	$.0008215 / KWH	$.0012337 / KWH	$.001638 / KWH
X 8500 KWH ave. annual consumption	X 8500 KWH	X 8500 KWH	X 8500 KWH
$6.66 yearly tax burden	$ 6.98 yearly tax burden	$10.49 yearly tax burden	$13.92 yearly tax

(4.9 tons of coal or 14.7 barrels of oil needed to produce 8500 KWH)

4.9 tons of coal	14.7 barrels of oil	14.7	14.7
X $8	X $10	X $15	X $20
$39.20 X 17% = $6.66	$147.00 X 4.6% = $6.76 $147.00 X 1 1/2 mills = 22¢ $6.98	$220.50 X 4.6% = $10.14 $220.50 X 1 1/2 mills = 35¢ $10.49	$294.00 X 4.6% = $13.5 $294 X 1 1/2 mills= 42¢ $13.9
$39.20 + $6.66 = $45.86 total coal cost	$147.00 + $6.98 = $153.98 total oil cost	$220.50 + $10.49 = $230.97 total oil cost	$294 + $13.92 = $307.96 t. oil co

coal	$45.86	12%
trans.	99.36	26%
environ.	45.86	12%
C+O+M	198.72	52%
	$389.80	100% component

$6.66 + $389.80 = 1.7%

Mr. **Sharp**. Thank you.

I am told that the chairman had intended that—according to the witness list—this panel would include two other public representatives, the gentleman from Montana, Mr. Williams and Mr. Towe, were to have been part of this panel. Rather than putting us through two rounds of questioning, if you gentleman have a few minutes, because I am afraid some of our members are going to ask——

Mr. **Brown**. Well, Mr. Chairman, I am concerned about the Members of the House and the Senate, all of whom, I am sure, have lots of other fun things to do this afternoon. Maybe the questions would be possible now, with these gentlemen here, because they may get called away also.

Mr. **Sharp**. All right. We will do that. Let me do this, if I might. I would urge our colleagues to try to keep their questions short.

The chairman set up an enormous list of four panels, and many individuals petitioned to be added as witnesses and have been added. So I don't know how long this is going to take. I will recognize the gentlemen in the order they appeared after the gavel came down. Mr. Gramm, first, for 5 minutes. We will try to stick rigidly to that time.

Mr. **Gramm**. Well, Mr. Chairman, I can be brief. I don't think we are ever going to change these gentlemen's minds.

Senator **Wallop**. It was our plan to change yours.

Mr. **Gramm**. I would like in the time I have got to ask a question and have each of you respond. I have your statements here. I understand your position, I feel, perfectly, or to the extent my limited abilities allow me to do it. But I think there is a response to the three points that have been raised here.

I come from a State that collects more in severance taxes than any other State. You make the point that we are talking about peanuts. The severance tax, whether it is 10 or 11 percent or 17 percent in Wyoming, as compared to the overall cost of coal, is peanuts, and I think that is true. But the fact that it is peanuts today does not mean that it is going to be peanuts in the future. And I think we are dealing here with a very important problem.

And the problem basically is this: The most negative aspect of the energy crises, to me, is that it has spawned a new regionalism in this country that I don't think has been present since the Civil War. It is a new regionalism whereby each part of the country is trying to look out for itself.

I think that is what happens when you have a crisis such as this, especially when that crisis is generated by a system of controls.

Just to give you an idea how big the problem is, if the State of Texas imposed a severance tax equivalent to the severance tax imposed by Montana on coal, oil, and gas, we would collect $20 billion a year in severance taxes.

If we imposed a 27 percent severance tax on oil and gas in Texas, we would collect $11 billion. My concern is not just about Wyoming and Montana. My concern is if we allow this new regionalism—this intent to export the national interest for State benefit to be unchecked—that it is going to grow in other parts of the country, and as each region tries to capitalize on its own comparative advantage,

best copy available

on its own resources, I think we will impose a heavy burden on interstate commerce, and I think everybody will lose.

The second point is precedent. I think the precedent is very clear here. I think the constitutional mandate and indeed responsibility for the Congress to prevent undue burden on interstate commerce exists in the interstate commerce clauses of the Constitution.

Now, whether or not a 12 percent severance tax is a burden, what the magic number is, is a thing that is open to dispute. But I think to say that there is no precedent, that this represents a selective limitation on the States, that it represents an intrusion into States rights, I think just in the overall picture of the Constitution won't hold water.

And, finally, to talk in terms of Btu equivalents doesn't make any sense. Btu's are not perfectly convertible. If Btu's were, I would put leaves in my car. The problem is it makes a great difference what form the Btu is in, and the only common denominator we have got is what people are willing to pay for the Btu's. And, therefore, I think dollar value is the only thing that can be used; and, in fact, I think a strong argument can be made that the dollar value, since we do have price controls on oil and gas and, therefore, underprice them relative to market value, and we don't have those controls on coal, that, in fact, the existing tax structure on value makes your severance tax higher relative to oil and gas than they would be in any kind of free market.

Now, Mr. Chairman, I know I have infringed on 3½ minutes of my time, but I would like to give these gentlemen the 1½ minutes to basically respond to those three points.

Mr. **Cheney**. If I might take 30 seconds, on the first point, I have the utmost respect for my colleague from Texas, Mr. Gramm. He is a distinguished economist.

We find ourselves in Wyoming in a difficult situation. We are not all that eager to have the kind of development that is forecast for our State. We frankly have the feeling that we are going to have a massive synthetic fuels industry in northeastern Wyoming because the folks in Seabrook or Harrisburg don't like nuclear power, or the folks out of New Jersey don't like to drill for oil, or the Congress won't open up the national petroleum reserve in Alaska.

We have moved forward because we feel it important for the country to support this kind of effort to increase our energy resources here at home. The price that has been extracted in terms of the severance tax is modest and only goes to meet those needs that we have identified here today. I don't think it is fair to talk about the West or Wyoming being blue-eyed Arabs or having an approach that we are going to rip off the rest of the country. Frankly, there are a good many people in Wyoming who would just as soon forget it; but we don't have that option.

Senator **Simpson**. Mr. Chairman, I think that the constitutional question is a very real one, and I can only cite to you and leave you the citation as you ponder this issue, that is the *National League of Cities* v. *Usury*. The U.S. Supreme Court Stated very clearly that it is not within the constitutional grant of authority to Congress for regulation of interstate commerce, to prempt a traditional function of State government. Production of revenue to finance public facilities and services is clearly such a traditional function.

The sweep of the commerce clause is limited so far as traditional functions of State government are affected. And I hear what you are saying, sir. You are speaking of oil and gas.

If we had an 11 percent tax on oil and gas, we would raise just that much scratch too, but we are not talking about oil and gas.

Senator WALLOP. I would just answer the remaining point, and that is, that while Btu's are not perfectly convertible, I will grant you that as a percent of end use, the amount of taxation and the burden therefore on commerce and the consumers is significant. And the percent, as a percent of end use, Texas—your State, I believe, is Texas——

Mr. GRAMM. Correct.

Senator WALLOP. As a percent of end-use cost in every level except coal, which is not available for you, reaps a higher percentage than does the State of Wyoming, with a 17.5 percent tax.

And so that is a valid comparison, perhaps not on Btu, but as a percent of the end-use cost to the consumer it sure as hell is.

Mr. GRAMM. Well, it just so happens that oil and natural gas are a little bit cheaper to transport than coal. I think that is the basic difference.

Mr. SHARP. The Chair recognizes the gentleman from Colorado, who should have been recognized first. He is a senior member of the subcommittee.

Mr. WIRTH. Thank you. I greatly appreciate all of the gentlemen from Wyoming being here. I want to make sure it is clear you are joined by other Western States. Governor Herschler was speaking on behalf of all the Western Governors.

We in Colorado are going to have major costs associated with energy and natural resource development. For example, in the northwest quadrant of the State alone we estimate we are going to need about $1.5 billion in private and public investment to accommodate the new growth caused by energy in that area.

You were talking about the growth of population in the Powder River Basin. In northwestern Colorado we now have about 14,000 people there. In the next 10 years we are anticipating a fivefold growth in population just in a 10-year period in that area of the State, and requiring the same as you all have, massive investments in highways and schools and hospitals and so on.

I think that the points made by Governor Herschler on that front are clearly shared by a great number of Rocky Mountain States.

I would also, just in reaction to Mr. Gramm's earlier analysis, it seems to me that we have to also recognize that differences in resource bases that we are talking about between the States. When we are talking about the different kinds of energy sources being extracted, the costs related to those, and the social costs related to those, are very, very different if you are talking about oil and gas and coal mining.

I think that has to be understood. It seems to me that one of the thrusts of the Federal system is to reflect this kind of difference between the various States and that that must be respected, and those differences are ones that I think we in the Rocky Mountain region hold dearly.

I would hope that this does not turn into a confrontation between East and West, or consumer/producer, or the Rocky Mountain States versus other individuals, or the Federal Government versus state governments, but that we can accommodate in working out some kind of a fair national energy policy.

And I stress that I think all of us are committed to developing that kind of national energy policy as we were trying to do that with the Energy Mobilization Board or the Energy Security Corporation.

All of the resources that we have in this country have to be turned toward that end.

What disturbs me about this particular legislation are some of the reverse spins that may occur on this. If we impose this tax, for example, impose this limitation, on oil, and you are precluded in Wyoming from developing the kind of severance tax that you in your wisdom think is necessary, what alternatives do you have then in the State of Wyoming? Would any of you like to address that?

Senator SIMPSON. I will. We can do two things that I can immediately think of: We can start taxing the value of coal in the ground. This present tax that you are trying to limit away is a one-shot tax. We have no tax in Wyoming on coal reserves in the ground. We do not have an annual 16.5 percent assessment, on the in-place minerals, and if we are going to tax reserves, we can raise more money that way than we can envision with the mineral severance taxes on the act of extraction.

I believe in Texas, because you do not have public lands, you may tax coal and other mineral reserves. If we ever go to that system, we will be well taken care of.

The second thing we could do is with legislative approval, whatever you take away from us in coal tax, whether it is 5 percent or 7, we can raise that with a 1-percent increase in our severance tax on oil and gas. Then the shrieking will go on again in the northeastern parts of America when winter comes as to why the cost of oil and gas went up.

But we don't have anywhere else to turn. Or we could turn to uranium, because we produce the largest amount of yellow cake in the United States.

Mr. WIRTH. Where does that have an impact if that tax were to go up?

Senator SIMPSON. The same place. All our severance taxes go to the same slot, part of it to the permanent mineral trust fund, part of it to highways, part of it to the Wyoming Community Development Authority, to build housing.

Mr. WIRTH. Where would the impact of the yellow powder tax be felt on that? Where would the impact be felt?

Senator SIMPSON. Well, eventually by the consumer on the passthrough contracts of all utilities.

Mr. WIRTH. So, to preclude you from doing it in one area, it will be felt in the other area. We are squeezing a sponge here, that Wyoming does a responsible job of taking care of the development needs in Wyoming is now approaching a coal severance tax. You have worked out that kind of formula yourselves. To be precluded from doing that will squeeze it on to a consumer in New England.

Senator WALLOP. I would say, too, it is a question of congressional cake and eating it too, and some consistently would be welcomed by those of us who view this. Under the windfall profits tax, local ad valorem taxes were not considered as severance taxes for the purposes of deductibility from the windfall profits tax, but under this formula, under this bill, they are. And it doesn't seem to be an adequate assessment of reality. That is nothing new for the Congress, I grant you, but somehow it is a lot on the public who watch us work.

Mr. WIRTH. Governor Herschler wanted me to add that he had been working for 10 years on trying to get some kind of a form of energy impact assistance legislation passed. The Governor has been doing that.

A lot of us in Congress have been concerned about that. In a tight budget year, that has been dropped and put into the future. And we are being in a way double penalized with it and the budget crunch here and not having that kind of ability, and now being precluded from doing the kind of development required.

Thank you.

Mr. SHARP. Thank you.

Mr. Loeffler from Texas is recognized for 5 minutes.

Mr. LOEFFLER. Thank you, Mr. Chairman.

I am somewhat chagrined that the good Governor of Wyoming didn't stay until I had a chance to visit with him, since he addressed the issue of San Antonio's coal rates. And the good mayor of San Antonio represents the same constituency I represent, my population being 300,000 of a city of almost 1 million people.

I think he should know clearly that this Congressman, the mayor, and the other Members of Congress who represent that area certainly do not have great admiration for the monopolistic controls of ICC or Burlington Northern. And if he would like to come to San Antonio, he would probably be treated just as the ICC and the Burlington Northern Railroad are, as well.

In looking at the severance tax issue, as my friend from Texas has already very clearly pointed out, Texas is dependent on a severance tax, but this tax was levied decades ago and it hasn't changed.

I believe in the right of a State to raise its revenue in a responsible fashion, yet I am fully aware that sources of Federal and State revenue to meet the impact of coal production are available in Wyoming, in Montana, and in other States. In fact, the Federal sources to offset the costs that are associated with the mining of minerals, oil and gas, as well as coal and other resources, include these: the 601 program, States' share of revenues from leasing of federally owned minerals, loans against expected future leasing revenues, payments in lieu of taxes, and reclamation funds under the Surface Mining Control and Reclamation Act.

So there are certain amounts of Federal money available to states that have the kind of impact expressed by our friends from Wyoming this afternoon.

I spoke about responsible severance tax, about responsible means of raising revenue within States, which, I believe, is clearly their right. But I think it should be pointed out for the record—and again I am sorry the good Governor is not here to respond—that he recently proposed a substantial 5 percent across-the-board increase in severance taxes in the last budget session of the Wyoming legislature.

This increase would have raised total Wyoming taxes on coal to more than 20 percent—in fact, 22 percent. This increase would also have nearly doubled Wyoming's severance tax revenues in 1 year, resulting in approximately $100 million in additional revenue to the state.

He spoke of the mayor, and of me, and of the city of San Antonio, as being irresponsible. I believe, in fact, he is irresponsible. And he is precisely the reason that we are here today.

The testimony provided by the delegation from Wyoming did not address the issue as he has addressed it in his action in the State of Wyoming. And as it is clear to me that when the State legislature did not adopt his proposal, there must be some sense of rationale back home. For that I say thank God it is there.

The legislation that we are looking at tends to curb the irresponsible activities with respect to the levying of the severance tax, not the responsible approach to generating revenues within the States, as is their prerogative.

I basically have no other comments to make, except I think the Governor has overstepped his bounds and that, speaking for the city of San Antonio, he would be as welcome today as Burlington Northern and the ICC.

I would be happy for you to respond.

Mr. **Cheney**. If I may respond, I would like to point out, obviously the legislature did not raise severance taxes this year in Wyoming.

Second you talk about payment in lieu of taxes, for example, as something there to deal with impact. Well, it is not to deal with impact at all. The fact of the matter is that half of Wyoming's own surface rights are owned by the Federal Government. We would love to have the kind of arrangement Texas has, where you have no Federal lands. I am sure we would be happy to forego our payment in lieu of taxes if we had control of the 48 percent of the State that currently owns surface rights by the Federal Government and the two-thirds subsurface rights.

Mr. **Loeffler**. If we could have the epitomy, we would remove the Federal controls on gas and oil and the federally owned lands in Wyoming, and we would all be happy.

Mr. **Cheney**. We have supported that as well. I think it important to keep in mind one of the reasons our small communities do face difficulties when they get this kind of impact is the fact they are small, they are totally surrounded by Federal land; there is no tax base whatsoever because we don't have access to it, because it is owned by the Federal Government. And those kinds of payments you make reference to are not there to deal with impact; they were there long before that, to deal specifically with the fact we are unable to tax.

Mr. **Gramm**. Would the gentleman from Texas yield?

Mr. **Loeffler**. I would be happy to.

Mr. **Gramm**. I think it is interesting to note while the Federal Government owns 48 percent of the land in Wyoming, that Wyoming as a State receives 50 percent of the royalties going to the Federal Government for that production.

Senator Wallop. You might also note that the payments in lieu of taxes have been reduced by the Congress this year, and the State royalties been subjected to the Federal windfall profits tax.

Senator Simpson. And if I might answer that, Mr. Chairman, when you have 48 percent of your surface owned by the Federal Government and 72 percent of your minerals, you can't levy State taxes on it.

Mr. Loeffler. Could the gentleman give me—the junior Senator—give me the estimated receipt of Federal revenues to the State of Wyoming through the various provisions that I have enunciated in my remarks? Do you have that?

Senator Wallop. It is $110 million this year, Congressman, in Wyoming.

Mr. Loeffler. I understand that, from the Reclamation Act alone in the first 6 months of this year, these payments have amounted to some $50 million; is that correct?

Senator Wallop. Congressman, you might also point out to your staff member that those revenues are directed as to what they can be expended upon.

Mr. Loeffler. What is that for?

Senator Wallop. That is to reclaim abandoned mine lands.

Mr. Loeffler. It was my understanding that that is part of the reason why you have a severance tax to take care of that.

Senator Wallop. These are to take care of former mistakes that have existed. This was something, incidentally, that the State of Wyoming's delegation fought against in the surface mining law, but certain eastern representatives felt that it was important to them.

Mr. Sharp. The time has expired.

Senater Simpson. Just let me say the original 37.5 percent that the Congress allocated to the Western States was to be earmarked for schools and roads; and that is exactly what we have used it for, due to the lack of tax base, because of the large amounts of Federal land.

The new 12.5 percent, Congressman Loeffler, the new 12.5 percent which we received some 4 years ago, is all directed to planning public facilities, and public services directly affected by impact development.

Mr. Gramm. Would the gentleman yield?

Mr. Sharp. The time of the gentleman has expired. We will have to move on.

I recognize the gentleman from Ohio, Mr. Brown, for 5 minutes.

Mr. Brown. Thank you, Mr. Chairman.

In the immortal words of Henny Youngman, "Now, you take Ohio coal. Please, take Ohio coal."

I wish we had your problem. We have got a lot of coal mines with coal ready to produce and a lot of miners ready to work, and about 25 percent of them unemployed at the moment, and we are having difficulty under the practices of the Federal Government getting that coal either mined or produced, or burned once we get it produced.

However, I have a lot of problems with this whole issue. I must say that initially I saw it as a fairly simple issue, from the standpoint of the consumer and the impact on the cost; and perhaps I still will come off on the side of the argument that says that the States should not burden interstate commerce unduly.

But I must say that I am always a little nervous about that being a Federal judgment, particularly a congressional judgment, with all due respect to the panel, to both panels, because I have the feeling that we may be more concerned about our own interests than we are about the interests of the whole country on some of these issues.

But I think there is a States' rights issue here that bothers me, and I want to ask a couple of questions.

To go back to Ohio coal, when the legislation at the Federal level was set, the strip mining legislation, I am under the impression that Ohio had a stricter strip-mining law than the Federal legislation called for, one peculiarly drawn for the situation in Ohio. And I am sure that the States have the right to draw that kind of legislative limitation on the extraction of their own resources, do they not?

Senator WALLOP. They do, absolutely, and the case was the same with Wyoming. We had a strip-mining law that was substantially stronger than the Federal one that was passed, let along proposed.

Mr. BROWN. I suppose that could even be extended to suggest that through that vehicle or some other they could even prohibit the extraction of the resources, could they not?

Senator WALLOP. Presumably they could.

Mr. BROWN. Which means you can set your mining and reclamation standards either at such a level where the removal of the coal becomes quite costly or almost impossible, or where it could be done relatively inexpensively with reference to the cost of the product being sold from your resource base.

Senator WALLOP. That is absolutely true.

Mr. BROWN. I wonder, if we set a precedent in the tax that you impose on such resources, if we might not also be setting a precedent for the limitation of the local laws which would have an impact on the cost of the resources that come into commerce?

Senator WALLOP. Very likely. In fact, we have toyed dangerously close to that with the Energy Mobilization Board.

Mr. BROWN. Let me ask you also, whose judgment ultimately is it as to whether the windfall profits tax set by the Federal Government is a burden on interstate commerce and the ability of a State to sell its product in commerce?

Senator WALLOP. I don't think anybody contemplated burden. Everybody was so hellbent to take a hammer after the oil companies that they forgot what they were doing to little royalty owners and independents at home. I have had some folks saying, "Gee, I didn't know mine were going to be taxed. I thought you were after Mobil Oil."

Mr. BROWN. I guess I am saying that nothing the Federal Government does can be construed to burden commerce, but only what the State government does can be construed to burden interstate commerce.

Senator WALLOP. That is apparently the philosophical gist that could be drawn from this legislation.

Mr. BROWN. But you would not argue with the right of the Federal Government with reference to its lands in Wyoming to set limits on the removal of the coal from its lands?

Senator WALLOP. No severance; we have very, very little say in those matters.

Mr. BROWN. So that if this legislation were modified in such a way as to limit—well, does your severance tax apply to extraction of coal from Federal lands?

Senator WALLOP. The way it works, yes, it does, but the Federal Government makes its deal with the coal company, with the producing company. And after that time it becomes a property right, and at that point in time is when the severance tax is levied.

Mr. BROWN. Could I ask you two distinguished Senators, distinguished Members of the other body, Members of the other distinguished body, whatever it is, is the Senate seriously interested in this piece of legislation?

Senator WALLOP. I certainly hope not.

Mr. BROWN. Could you tell us——

Senator WALLOP. We have hearings on it next week.

Senator SIMPSON. I have cornered my colleague, Senator Dale Bumpers of Arkansas, and am beginning to pump new life and intellectual data into him with great force. And he is listening because——

Mr. BROWN. Both of those things seem startling to me, but go ahead.

Senator SIMPSON. But Senator Bumpers has been the advocate of the bill in the Senate, and I am well aware that he is hearing some things that he did not know before, because it is a very emotionally attractive thing; but it won't do what it is said that it will do, and that is to reduce the utility bill.

Mr. BROWN. Well, I appreciate that comment, and I would appreciate any of the legal citations you may be able to give us with reference to the State's rights issue on this matter.

I must say I think it is not a simple issue and is one we should get into with great care, because all of us and the various States of this Union have matters of interest to us in this area. I must say that we have in the past in this subcommittee been very considerate of the Federal Government interposing its will over the State's will.

But in this case I think we may be a little close to the reckless line.

Thank you.

Mr. DINGELL. The time of the gentleman has expired.

The gentleman from Washington, Mr. Swift, is recognized for 5 minutes.

Mr. SWIFT. Thank you, Mr. Chairman.

Fortuitously, we haven't succeeded in totally homogenizing the United States yet. It seems to me as I serve in this body that we find ourselves to be much more different one from the other, region by region, than we like to think sometimes, that we, in fact, act on the assumption that we are the same everywhere, have the same problems everywhere, and have the same amount of information about everything, everywhere, and go about acting on that misplaced certainty.

I know that out in the Pacific Northwest we have some problems I don't think you people know anything about. They certainly have some problems in Texas I don't know anything about; and I would appreciate it if you would inform me a little about this.

It seems to me among other things we get a problem because your tax has a higher percentage than other States' taxes. But isn't that direct comparison a kind of apples-and-oranges comparison? Could you amplify that a little for me?

Mr. CHENEY. Yes, it is to some extent. There is even some confusion with respect to H.R. 6225, the bill before the committee, as to whether or not it would compute Wyoming's severance tax as 17 percent or 10.5 percent. The State's severance tax is 10.5 percent. In addition to that, there are ad valorem taxes levied by counties up to 6.5 percent. So you could get the sum total at various places of 17 percent, but again that is a matter of interpreting the language in the bill.

It is indeed true that it is a little like comparing apples and oranges. The taxes are applied in different ways, after various deductions are made. It does vary from State to State.

We talked about the Btu equivalency and the fact that Texas' severance tax on oil at 4.6 percent, I believe, results in a higher end use to the consumer than does Wyoming's tax of some 17 percent on coal. So it is all, I suppose, in the eye of the beholder.

Senator WALLOP. There is one other thing I might point out, too. If you look at the original table that was bandied about over in the Senate when Senator Bentsen introduced his bill, you will look down at the percentages and then you would look down at the dollars or cents per ton; and they didn't make any sense, because it all depends on how you evaluate the levy.

I mean, for the purposes of the Congressional Research Service document, Wyoming was said—they used the figure of $16.80 a ton, I think, but we actually assessed the severance tax on a value of $7.94 a ton, because we allowed for the cost of beneficiation to be removed before the tax was levied.

So, while we may have 17 percent—and that is arguable, but call it that for the sake of argument—another State which had only 8 percent but levied it on the sales price of the coal would probably reap a higher figure than we do at 17.5 percent, allowing for the cost of beneficiation.

Senator SIMPSON. Congressman, let me just add an interesting thing. You are asking about apples and oranges. Remember that our principal tax in Wyoming is on oil and gas. We raise more revenue with our severance tax of 4 percent on oil and gas than we do with these other mineral excise taxes. So, if you take this one away and you find oil under the decontrolled level going to $35 or $40 a barrel, why, we could levy one-tenth of 1 percent perhaps, or a half of a percent or a quarter of a percent on oil and gas and fill any slots.

Mr. SHARP. The time of the gentleman has expired.

The chairman would like to thank the panel.

As one of the sponsors of one of the bills, I discovered it is a quick way to get a first-class education about Wyoming, and you gentlemen are partly responsible for that. You are very knowledgeable and forceful and don't give up in making the points to my staff and myself. And I appreciate that.

I would like to say as one of the sponsors that, first of all, we might be educable. We are here to listen; and, second, I would like to say that I think that while different people come into this with different perspectives, some of us are respectful and appreciative of the fact that the State of Montana, the State of Wyoming, and some of the other Western States, are wisely very sensitive to what is going to happen to them with development, very wisely engaged in reclamation laws and I think that my consumers are happy to pay for those costs. I think we will bear some of those direct costs in the cost of the coal as it is purchased. And I think that we should.

I think that we are sensitive to the fact that you have a right to levy a severance tax. That is not really the principle we quarrel with. The question is, is there a point at which it becomes unreasonable and unfair? Is there a point at which you are able to tax Federal lands in which, we still think we have some interest and our constituents have some interest—is there a point at which you are able to put the burdens of your taxes pretty much onto people who buy outside the State? Our concern with that is not that it might be unfair, but that it may not generate a political check in your State legislatures, that they may find the easiest decision on taxation is that if you can, in fact, tax outside the State, do it.

We all look for those ways as politicians, and we hear rumblings that some members of the State legislature can't wait to compete with Montana or the Province of Alberta, and somebody who has a chance to tax outside. I think that the point is well taken, that where we stand on the taxes at this given point, particularly in Wyoming—I would not argue the same thing in Montana—may not, in fact, be a great burden yet on our consumers.

But I guess we see two things, and perhaps we are wrong about this, but we see two things that might happen: One, clearly more coal is going to be mined and it is going to be shipped out of the State. So the income from your severance taxes is going to grow if the tax rate is never changed.

Second, the value of that coal is very likely to go up in the marketplace and, therefore, your revenues are likely to go up just as your costs are likely to go up. But if you are also in a position where it is politically easy at home to bid up that rate, we are going to find ourselves 5 or 10 or 15 years from now with a problem.

I am not as sympathetic to the Texan's cry about your regionalism because for some reason my region sits between the civil wars and we fall right square in the middle and take it from both sides. We are looking seriously at your claims, as to what your reclamation costs are and your claims as to what your needs are, and I don't pretend we should dictate to you exactly what those ought to be, but I am concerned that we may face what is a worsening situation in those two States and perhaps others will find it is suitable for them to compete and get every benefit they can, tax

It is Federal policy to encourage the use of coal, and that Federal policy may be contradictory, but it is clearly Federal policy to encourage coal use.

It is clear the marketplace will increase the value of coal and our dependence on coal, and I think that puts you in a favorable position. I know you have problems with that. You are going to have new income coming in from that. And we are just wondering whether you will take the extra bite——

Senator Wallop. If I may respond, with thanks for your holding the hearing and your intelligent questioning of the issue, the reclamation cost of the land is perhaps the least cost that a State like Wyoming with an agrarian society and largely valued for its scenic attributes can stand. Our big problem, frankly, is going to be the human reclamation.

Along with our 1,000-fold increase in the production of coal, our doubling of uranium and our doubling of natural gas production has come a tripling in our rate of suicides and a tripling of our alcoholism and some incredible human costs that the rest of the country cites with programs like "60 Minutes", on citing Rock Springs as the kind of place you wouldn't want to go to.

And I think one of the things we want to do is to try to prevent the human tragedy associated with rapid development of these resources.

Mr. Sharp. Senator, I respect that and appreciate that.

I guess one of the things I am going to be looking at as we decide how vigorously to push this, or narrow the bill to Federal lands, is whether the response in Montana and Wyoming and other States is one of simply saying, Hey, we can cut our property taxes; we can avoid or cut sales taxes and avoid all of these other things that most citizens have to tax themselves for, and that operates as a special check on them when they have to tax themselves to pay for all of this, or whether we are just going to lump it all on this commodity if we can and ship it out of State and charge somebody else.

I don't mind the principle; I mind the degree.

Senator Wallop. That is a reasonable thing to look at. May I say, most Wyoming cities have levied on themselves an additional 1 percent sales tax to go along with what revenues are flowing from the severance taxes to take care of human impacts and other things.

I think we have handled it responsibly.

I would add one word of caution: In the construction industry it is very difficult to put on a ceiling without putting on a floor at the same time, and whatever you might limit us to, you will probably raise others, too.

Mr. Sharp. Well, I do worry a little bit about the State of Texas deciding they might. But there is a fortunate political check in the State legislature of Texas: They must tax their own people; they are major users as well as exporters of the goods, and that gives us in Indiana a little protection from their going hog wild with it.

Senator Simpson. Mr. Chairman, I want to thank you very much, and Chairman Dingell, Al Swift, and Congressman Gramm, and all of you who have been so attentive.

Bud, I really appreciate your hearing us, and just remember one thing, that in all the shot and shell that went on in Wyoming about the 5-percent severance tax, our legislature did not impose any additional severance tax.

Mr. SHARP. Well, we are delighted. We hope that was an exercise in self-restraint. It may be that the Federal threat, if they ever carried it out, encouraged that.

Senator SIMPSON. That wouldn't have stopped them in Wyoming.

Mr. SHARP. That is what worries me.

Mr. CHENEY. Let me thank you again. I also ask permission to include in the record a statement of our colleague from Montana, Mr. Marlenee, who wanted to appear today. [See p. 237.]

Mr. SHARP. Certainly. I believe the gentleman testified at our first hearing.

Mr. DINGELL. Just very briefly, I would like to express my apologies for being called out of the room. This subcommittee, under the budgetary process, is being called upon to reconcile our expenditures, and so forth, in the amount of $300 million, and so the subcommittee chairmen at the direction of Chairman Staggers had a meeting set for 2:30 for some while, to discuss this. That is the reason I was called from the room.

I express my gratitude to you and my commendations to you. We will certainly consider most carefully your thoughts and concerns.

Mr. SHARP. The Chair will now hear from the distinguished Representative from Montana, Mr. Williams, and the Senator from Montana, Mr. Towe. We will be happy to make anything written a part of the record, and I will let you proceed.

STATEMENTS OF HON. PAT WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA; THOMAS E. TOWE, A STATE SENATOR FROM THE STATE OF MONTANA; AND HON. RON MARLENEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. WILLIAMS. Thank you very much, Mr. Chairman. I will submit for the record a rather lengthy statement, including attachments. [See p. 206.] However, in my oral testimony I will summarize.

I come to speak today in defense of the sovereign right of all States to tax businesses within their borders. The real issues are neither the cost of energy nor its impact upon consumers, nor is the issue regionalism but, rather, the State's sovereign right to tax.

That sovereign authority extends to all States and all States make legitimate use of it.

A State's authority to tax resources developed within its borders and in a manner approved by its residents must not be infringed. Texans have the authority to tax oil; Washingtonians have the authority to tax timber; Minnesotans to tax iron ore; North Carolinians to tax lumber; Louisianians to tax natural gas. Those rights should not be infringed upon by this Congress.

We Montanans have always been willing to share the resources of our treasured State, and we will continue to share.

In this instance, State sovereignty, however, is of high concern. We prefer the term "State sovereignty" to that of "State's rights." To us, "State's rights" has a different connotation.

We Montanans were appalled when our neighbors in the South used "States rights" to stand in the schoolhouse door. We do not intend to stand in the doorway of America's progress. We will not block the threshold to this Nation's energy future. But Montanans are committed to State sovereignty and, frankly, I believe the people in Texas, Louisiana, Indiana, Michigan, and other States—all other States—stand to lose by this legislation. And I believe that the people in those States also support their State's sovereignty.

This legislation would establish the precedent of Federal interference in State taxation of resources, an area that traditionally has been left to the States. If we start down this road toward Federal regulation of State resource taxation rates, it would be possible, and even likely, that all States will lose their taxing independence.

If taxes on the Nation's coal are limited this year, natural gas may come next year, shale oil the next, perhaps geothermal, and then, Mr. Chairman, the unthinkable, oil itself.

Frankly, I don't believe our colleagues from oil producing and natural gas producing States would support such legislation. And I doubt if they would be supporting this bill today if the bill affected any of those major energy resources.

I question whether this legislation will result in any benefit to the consumers because there is no guarantee or even suggestion that utilities will lower their rates if this tax is restricted or reduced.

One effect of Federal restrictions on State energy taxes will be to discourage further development, the same development that this legislation is meant to encourage.

If Montana's coal tax is restricted, Montana will not have the encouragement to open her coalfields to the utilities and coal companies who are stripping away our final abundant resource mineral.

It makes no economic sense for any State to promote resource development that is going to drain the State treasury through impact costs above and beyond what is available through the limited State and Federal offsetting receipts. No State does that.

Texas has received over $1 billion in the past year to offset the limited impact of oil and natural gas development. All the energy producing States do likewise, as does every State when faced with certain costs associated with other types of development.

Let's examine the case that has been made against Montana and see if our State's tax is unfair and represents an excessive burden when compared with other energy taxes paid by consumers.

The Congressional Research Service said in a recent report, "Montana's severence tax does not impose any more of a burden on other States than severance taxes on oil and gas from the perspective of the end product that the consumer actually uses."

The CRS developed the figures to back up that quote. I have included the CRS report with my statement.

The Montana Department of Revenue gathered figures for the exact amount of severance taxes paid by each of the nine major coal purchasers and calculated the burden on those companies' customers.

The average burden for last year was about 21 cents a month. A chart detailing those figures and the methodology is also attached to my statement.

It is obvious that the burden on consumers is very light, especially when you compare Montana's severance tax with other States. As I mentioned, Texas took in more than $1 billion in severance taxes last year; about one-third of all severance tax collections in the country.

The list, which is included in my prepared statement for the record, includes States whose representatives are supporting this legislation, despite the fact that their home States collect considerably more with their own severance tax.

It has been said that Montana doesn't need this money for impact aid, but that is not so. Montana already has a shortfall of dollars necessary to meet its impact needs, and our coal boom is just now beginning. No one knows what it will cost to correct the environmental damage caused by this mining, and nobody knows what it will cost to pay for the services that will be necessary to support the services of the mining and people left behind when the mining is done.

I would like to make a few brief points about Montana coal.

Currently, Montana coal is the cheapest coal in the country, bar none, and according to the "1980 Coal Data Book," published by the President's Commission on Coal, our region's low-sulfur coal will still be the cheapest in the country in 1985. It is the biggest bargain in this Nation's coal bin.

Detroit Edison, one of the utilities supporting this legislation, knows a good buy when they see it. In the year Montana enacted this severance tax, Detroit Edison signed a 26-year contract for Montana coal and proudly boasted the deal would save its customers more than $1 billion over the life of that contract.

However, despite the inexpensiveness of western coal, it is more expensive than it ought to be, and the reason is freight rates. Those freight rates are a very big concern for we Montanans, whether we are shipping coal, wheat, lumber or other goods. Freight rates should be a concern of this committee and I think it is.

Montana's severance tax averages about $2.17 per ton of coal. Freight rates can amount to $20 per ton of coal. A Texas assistant attorney general acknowledged that freight rates are a much larger problem than any severance tax. By his calculations, freight charges now make up about 75 percent of the delivered price of coal, while severance taxes make up only a small portion of the remaining 25 percent.

I strongly urge the members of this subcommittee to defeat this bill and avoid setting off an energy war between the States. This unprecedented attack, focusing primarily on two States of the Union, should not prevail. Montana, aptly known as the Treasure State, has been a faithful, willing partner in this Union and has for years laid bare our treasure for the good of the nation. Now, when we are on the verge of opening our last large treasure chest, we are attempting finally to use a farsighted policy that will set aside some revenue for current and future generations.

We are not asking that every American sacrifice something to benefit Montanans, but rather we are asking that each State continue to establish its own taxing policy for the benefit of all the other States, united.

Mr. Chairman, I thank you and I would like the privilege of introducing the author of the Montana coal severeance tax, one of our State senators, Tom Towe.

[Testimony resumes on p. 218.]

[Mr. Williams' prepared statement and attachments follow:]

STATEMENT OF
THE HONORABLE PAT WILLIAMS
OF MONTANA
before the
SUBCOMMITTEE ON ENERGY & POWER
Thursday, June 5, 1980

MR. CHAIRMAN: Thank you for the opportunity to speak here today on this very important matter. I appreciate the Chairman's willingness to hold this second day of hearings, because I was home in Montana during the first day of hearings in March.

I come to speak today in defense of all states' sovereign rights to tax businesses located within their borders.

The real issue here is not the cost of energy or its impact on consumers, but the states' sovereign rights to tax. That sovereign authority extends to all states, and all states make legitimate use of it. A state's authority to tax in a manner approved by the residents of that state must not be infringed. In this case, a state's authority to tax resources developed within its borders must not be infringed. Texas has the authority to tax oil; Washington to tax timber; Minnesota to tax iron ore; North Carolina to tax lumber; Louisiana to tax natural gas; those rights should not be infringed upon by the federal government.

We Montanans have always been willing to share the resources of our "Treasure State," and will continue to share. In this instance, State sovereignty is of high concern. Montanans don't even like the phrase "state's rights." We Montanans were appalled when our neighbors in the South used "state's rights" to stand in the school-house door. We do not intend to stand in the doorway of America's progress. We will not block the threshold to this nation's energy future. But Montanans are committed to states' sovereignty, and frankly, I believe the people in Texas, Louisiana, Indiana, Michigan and other states who stand to lose by this legislation also support their state's sovereignty.

This legislation, should it become law, will establish a precedent of federal interference in state taxation of resources, an area that traditionally has been left to the states. If we start down this road toward federal regulation of state resource taxation rates, it would be possible and even likely that all states will lose their independence and would be forced to revise existing tax laws and state legislatures will have to seek federal permission before enacting severance tax laws. If taxes on the nation's coal are limited this year, natural gas may come next year, shale oil the next, perhaps geothermal and then, Mr. Chairman, possibly even the unthinkable--oil itself. Frankly, Mr. Chairman, I don't believe our colleagues from oil-producing and natural gas-producing states would support such legislation, and I doubt if they would be supporting these bills if they affected any of our major energy resources besides coal.

I question whether the intent of this legislation will be fulfilled through regulations of state coal tax rates. If the purpose is to lower consumer's utility bills, this legislation will be useless: the impact on consumers whose power is derived from Montana coal is less than a penny a day in most cases, and there are no guarantees or even suggestions that the utility companies supporting this legislation will return those pennies to their customers.

One effect of federal restrictions on state energy taxes will be to discourage further development of our resources, development that is desperately needed and ironically, is one of the stated goals of this legislation. If Montana's coal tax is restricted, Montana will not have the encouragement to open her coal fields to the utilities and coal companies who are stripping away our last abundant resource mineral. It makes no economic sense for any state to promote resource development activities such as strip-mining if tax restrictions guarantee a level of income insufficient to cover the impacts of such development. It makes no economic sense for a state to allow development that is going to drain the state treasury through impact aid costs above and beyond what is available through limited state and federal offsetting receipts. Not one of the united states is willing to deplete its resources without offsetting ax receipts: Texas knows this well. It received over $1 billion last year o offset limited impact of oil and natural gas development. All the nergy-producing states do likewise, as does every state when faced with ertain costs associated with other types of development.

Despite the fact that I don't believe we should limit state taxing authority or even be seriously discussing it, let's examine the case that so far has been made against Montana. Let us look at the facts and determine whether Montana's tax is unfair and respresents an excessive burden on consumers when compared to other energy taxes paid by consumers.

The burden of energy taxes on the consumer has been studied by our own Congressional Research Service, which concluded that Montana's severance tax accounted for only 3.6 percent of a consumer's utility bill last year, while Louisiana oil severance taxes accounted for 5.1 percent and Alaska's natural gas taxes were 3.8 percent of consumer's bills. CRS concluded: "While these numbers should be considered 'ballpark' in nature, they do indicate that Montana's severance tax does not impose any more of a burden on other states than severance taxes on oil or gas from the perspective of the end-product that the consumer actually uses." Attached is a copy of the CRS report.

The Montana Department of Revenue calculated the burden of Montana's severance tax on consumers in specific utility company jurisdictions and based on actual Montana-coal purchases by those utilities. Briefly, the results of the study show that the average cost per residential customer for nine major Montana coal purchasers was $2.54 in 1979, or about 21 cents per month. The highest range was 34 cents per month. Let me list those results for you: (Detailed chart attached)

Commonwealth Edison--the cost of the Montana severance tax per residential customer was $1.46 in 1979.
Interstate Power--78 cents.
Detroit Edison--$1.23
Minnesota Power and Light--$4.03
Northern States Power--$2.40
Montana Power Company--$2.59
Lower Colorado River Authority--$3.15
Wisconsin Power and Light--$4.07
Central Illinois Light--$3.18

It is obvious that the "burden" on consumers is very light, and it grows even lighter when compared with the burden placed on consumers by other energy taxes.

Nine states collected more severance taxes than Montana in 1979, according to the U.S. Census Burea. Excluding Wyoming, which also will be adversely affected by this legislation, those states and their severance tax collections are:

Texas	$1,025,550,000
Louisiana	511,589,000
Oklahoma	280,982,000
Alaska	173,685,000
New Mexico	159,431,000
Kentucky	154,017,000
Florida	91,902,000
Minnesota	71,263,000

I would like to point out that several of the cosponsors of this legislation will find their home states on that list, and that their states will not be affected by this legislation, despite their significantly higher severance tax collections. I don't begrudge those states their tax money, but I do want to make the point that all of our states--not just some--should be able to apply severance taxes at a reasonable level.

Yet another comparison shows Montana's tax to be the lesser of several taxes charged to consumers. In Illinois, customers of Commonwealth Edison paid $1.14 every month last year in sales taxes on the electricity they consumed, yet they paid only 13 cents per month in Montana coal taxes. Customers of Detroit Edison paid $2.22 per month in state and local sales taxes, but only pennies to Montana. Attached is a chart comparing these taxes.

Now, I want to talk for a minute about coal impact aid. It has been said many times that Montana can show no current or foreseeable need for the revenue from a 30 percent tax. That is not the case. Wyoming and North Dakota are expected to fall short of revenue needs for impact aid in the coming five years. In Montana, the shortfall is already here. Current requests for impact aid for Montana communities in coal mining areas exceed revenues available by at least $20 million. Road development needs alone identified in 1975 by the State of Montana add another $53 million to that figure.

It was also menticend during the first hearing that Montana receives royalties from the federal government which, when combined with a 12.5 percent state severance tax, presumably would be more than sufficient to cover impact needs. Again, that is not the case. In FY'79, Montana received a total of $8,007,409 in royalties for all minerals--including oil and natural gas--removed from federal land. The coal royalties portion amounts to only $544,782 for 1979, and only $458,924 for the first half of 1980. Even if federal royalties tripled through an unlikely triplying of federal coal leasing in Montana, they still would fall short of needs.

It was noted in the first hearing that Texas did not raise its taxes when OPEC embargoed oil shipments to the United States, while Montana quadrupled its taxes. We Montanans are not a people to stand idly by while being accused of profiteering, especially when the facts show otherwise. I would like to quote from an article in the July 1978 Voice, published by the Federal Reserve Bank of Dallas. The article was entitled, "World Energy Shortage Produces Severance Tax Windfall for Texas." When the OPEC nations cut production to artificially raise prices, Texas went to the bank with the profits, and it didn't have to do a thing to get them. Let me quote: "If the OPEC nations had not boosted world oil prices, and severance taxes from oil and gas in Texas had increased at about the trend rate of growth in the late sixties and early seventies, Texas tax collections for FY '74-'77 would have been about half the sum actually collected, or about $1.3 billion less. The increase in revenues attributable to the OPEC oil price boost is about the same size as the $1.1 billion increase in the budget surplus during the same four-year period. Hence, the rise in oil and gas prices has put off the need to raise severance taxes or revenues from other sources."

The supporters of this legislation are asking that Montana, Wyoming and possibly other states with up-and-coming coal development not be allowed to do on a limited and controlled scale what Texas and other oil states have been and are doing now in an uncontrolled rush to the Treasury with enormous dollar returns from consumers.

Montana has also been charged with using its coal tax money to provide tax relief to state residents, but it is a false charge. Coal tax funds in Montana are very specifically allocated, and none are allocated to tax relief. The earmarked funds from the severance tax go into programs that provide direct benefit to the coal development areas to help offset the impacts of mining on the land and the nearby boom-towns. The amount of money that last year went into Montana's general fund, which is used for general government operations and is allocated by the Montana Legislature, is equal to the cost of several programs in the general fund budget that are directly related to coal development. No tax cuts were funded by the Severance tax.

Meanwhile, the general treasuries of other states are greatly benefiting from the severance tax which they levy. Alaska, for example, is in the process of returning millions of dollars to its residents because of the excess revenues it is realizing from oil taxes. You, Mr. Chairman, myself and everyone else in this room are helping pay for Alaska's State government, and it's tax cuts. The same is true for Texas. There is no personal income tax in Texas, which isn't a bad idea in itself. But the reason there is no personal income tax there is that Americans all across the country pay enough at the gas pump and on their monthly utility company to fill the Texas treasury. Noted columnist Jack Anderson earlier this year wrote about the enormous windfall being reaped by Alaska and Texas, and speculated that the prosperity is so great in Texas that they may soon move to eliminate their limited sales tax, thus shifting even more of the burden of Texas state government onto the shoulders of American citizens. Montana's current practices pale in the face of these comparisons. Yet the supporters of this legislation seek to prevent Montana from using a small portion of coal revenues to assist State government functions that have direct benefits to coal development areas. This legislation would set a cruel and unfair double standard.

I would like to make a few brief points about Montana coal. Currently Montana coal is the cheapest coal in the country, bar none. And, according to the 1980 Coal Data Book, published by the President's Commission on Coal, our region's low-sulfur coal will still be the cheapest in the country in 1985 on a cents-per-BTU basis. It's the biggest bargain in the nation's coal bin.

Detroit Edison, one of the utilities behind this legislation, knows a good buy when it sees one. In the year Montana enacted its severance tax, Detroit Edison signed a 26-year contract for Montana coal and proudly boasted that the deal would save its consumers more than $1 billion over the life of the contract. However, despite the inexpensiveness of western coal, it is more expensive than it ought to be. The reason is freight rates. Those freight rates are a very big concern for we Montanans, whether we're shipping coal, wheat, lumber or other of our goods. Rail shipping is monopolistic in Montana, and will become a pure monopoly soon if the government does not assist in our efforts to enhance competition through maintenance of the Milwaukee Road.

Freight rates should also be a very big concern of this committee when it examines the cost of coal and its burden on consumers. Montana's severance tax averages to about $2.17 per ton of coal, but freight charges amount to as much as $20 per ton. Texas Assistant Attorney General David Hughes acknowledges that freight rates are a much larger problem than any severance tax. By his calculations, freight charges now make up about 75 percent of the delivered price of coal, while severance taxes make up only a small portion of the remaining 25 percent.

Mr. Chairman, I strongly urge the Members of the Committee to defeat this bill and to avoid setting off an energy war between the states. This unprecedented attack focusing primarily on two states of the union must not be allowed to prevail. Montana, aptly named the Treasure State, has been a faithful, willing partner in this union and has for years laid bare her treasure chests for the good of the nation. Now, when we are on the verge of opening our last large treasure chest, we are attempting to use a farsighted policy that will set aside some revenue for current and future generations. We are not asking that every American sacrifice something to benefit Montanans; rather we are asking that each state continue to establish its own taxing policy for the benefit of all the states--united.

MONTHLY TAXES PAID BY AVERAGE RESIDENTIAL UTILITY CUSTOMER

1977 Figures

	Sales Tax by Consuming State & City	Montana Production Taxes Total
Illinois (Commonwealth Edison)	$1.14 per month	$0.13 per month
Iowa (Interstate Power)	$0.67½ per month	$0.01½ per month
Michigan (Detroit Edison)	$2.22 per month	$0.03 per month
Minnesota (Northern States Power)	$0.91 per month	$0.22 per month
Wisconsin (Wisconsin Power & Light)	$1.06 per month	$0.27 per month

Table 3

STATE GOVERNMENT TAX REVENUE, BY TYPE OF TAX: 19[illegible]

(In thousands of dollars)

[illegible]	Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]

FINANCE

STATE SEVERANCE TAXES: 1979*

State	Title and application of tax (a)	Rate
Alabama	Iron Ore Mining Tax	3¢/ton
	Forest Products Severance Tax	Varies by species & ultimate use
	Oil and Gas Conservation Tax	2% of gross value at point of production
	Oil and Gas Production Tax	6% of gross value at point of production, 4% for wells producing less than 25 bbls./day
	Coal Severance Tax	13.5¢/ton (b)
	Coal and Lignite Severance Tax	20¢/ton in addition to coal tax
Alaska	Fisheries Business Tax	1 to 5% of fish value based on type of fish
	Oil and Gas Properties Production Tax	Percentage of gross value determined annually
Arkansas	Natural Resources Severance Tax	Separate rate for each substance
	Oil and Gas Conservation Tax	Less than 10 mills/bbl. of oil & 1 mill/1,000 cu. ft. of gas
California	Oil and Gas Production Tax	Rate determined annually by Dept. of Conservation
Colorado	Oil and Gas Conservation Tax	1 mill/$1 market value at wellhead
	Severance Tax (c)	Separate rate for each substance
Florida	Oil and Gas Production Tax	5% of gross value at point of production
	Solid Minerals Tax (d)	5% of market value at point of severance
Georgia	Oil and Gas Production Tax	5 mills/bbl. of oil & ½ mill/1,000 cu. ft. of gas
Idaho	Ore Severance Tax	2% of net value
	Oil and Gas Production Tax	5 mills/bbl. of oil & 5 mills/50,000 cu. ft. of gas (e)
Indiana	Petroleum Production Tax (f)	1% of the value
Kansas	Oil and Gas Production Tax	$.001/bbl. of oil & $.0002/1,000 cu. ft. of gas & $.001 bbl. of petroleum (g)
Kentucky	Oil Production Tax	5% of market value (h)
	Coal Severance Tax	4½% of gross value
Louisiana	Natural Resources Severance Tax	Rate varies according to substance
	Gas Gathering Tax	1¢/1,000 cu. ft. of gas (i)
	First Use Tax (j)	7¢/1,000 cu. ft. of natural gas as measured at a specified pressure and temperature base
Michigan	Gas and Oil Severance Tax	5% of gross cash market value (k)
Minnesota	Iron Severance Tax (l)	15 to 15.5% of value (depending on ore) minus credits
	Ore Royalty Tax	15 to 15.5% of royalty (depending on ore) minus credits
	Taconite, Iron Sulphides and Agglomerate Taxes	(m)
	Semi-Taconite Tax	(m)
	Copper-Nickel Taxes	1% of value of ores mined or produced (n)
Mississippi	Oil and Gas Severance Tax	The greater of 6% of value or 6¢/bbl. of oil and 6% of value or 3 mills/1,000 cu. ft. of gas
	Timber Severance Tax	15¢ to 80¢/1,000 board ft. depending on type of wood
	Salt Severance Tax	3% of value of amount produced
Montana	Coal Severance Tax	Varies by quality of coal & type of mine
	Metalliferous Mines License Tax (o)	Progressive gross value tax from 0.15% to 1.438% of value
	Oil or Gas Producers Severance Tax	Progressive gross value tax from 2.1% to 2.65% of value
	Micaceous Minerals License Tax	5¢/ton produced
	Cement License Tax (p)	22¢/ton of cement, 5¢/ton of gypsum or plaster
	Mineral Mining Tax	$25 plus 10% of gross value over $5,000
Nebraska	Oil and Gas Severance Tax	2% of value
	Oil and Gas Conservation Tax	5 mills/bbl. of oil & 5 mills/50,000 cu. ft. of gas
Nevada	Net Proceeds of Mines Tax	Property tax rate of place where mine is located
	Oil and Gas Conservation Tax	5 mills/bbl. of oil & 5 mills/50,000 cu. ft. of gas
New Hampshire	Refined Petroleum Products Tax	0.1% of value
New Mexico	Resources Excise Tax (q)	8% for most substances
	Severance Tax (q)	Varies according to substance
	Oil and Gas Severance Tax	3.3¢/1,000 cu. ft. of gas & 31.5¢/bbl. of oil or liquid hydrocarbon
	Oil and Gas Privilege Tax	2.55% of value
	Natural Gas Processors Tax	0.45% of value
	Oil and Gas Ad Valorem Production Tax	Variable
	Oil and Gas Conservation Tax (r)	Variable percentage
North Carolina	Oil and Gas Conservation Tax	5 mills/bbl. of oil and ½ mill/1,000 cu. ft. of gas (s)
	Primary Forest Assessment Tax	15¢ to 50¢/1,000 board ft. depending on use
North Dakota	Oil and Gas Gross Production Tax	5% of gross value at well
	Coal Severance Tax	85¢/ton & 1¢/ton for each 4 point increase in wholesale price index

STATE SEVERANCE TAXES: 1979*—Concluded

State	Title and application of tax (a)	Rate
Ohio	Resource Severance Tax (s)	Separate rate for each substance
Oklahoma	Oil, Gas and Mineral Gross Production Tax (t)	Separate rate for each substance
	Natural Gas and Casinghead Gas Conservation Excise Tax	7¢/1,000 cu. ft. less 7% of the gross value of each 1,000 cu. ft. of gas
	Coal Production Tax (u)	8¢/ton of coal
Oregon	Forest Products Severance Tax	5¢/1,000 board ft.
	Severance Tax on Eastern Oregon Timber	5% of value
	Severance Tax on Western Oregon Timber	6½% of value
South Dakota	Mineral Severance Tax	4% of net profits (v)
	Energy Minerals Severance Tax	4½% of taxable value of any energy mineral
Tennessee	Oil and Gas Production Tax (w)	1½% of sales price
	Coal Severance Tax	20¢ per ton
Texas	Natural Gas Production Tax	7½% of market value
	Oil Production Tax	4.6% of value if greater than $1/bbl.; otherwise 4.6¢/bbl.
	Sulphur Production Tax	$1.03/long ton
	Cement Distributor's Tax	2¾¢/100 lbs.
Utah	Mining Occupation Tax (x)	1% of value for metals & uranium, 2% of value for oil & gas
	Oil and Gas Conservation Tax	Up to 2 mills per dollar of wellhead value
Virginia	Forest Products Tax	Varies by species & ultimate use
Wisconsin	Metalliferous Minerals Occupation Tax	Progressive net proceeds tax from 4% to 20%
Wyoming	Oil and Gas Production Tax	2/5 mill/dollar (k)
	Mining, Excise and Severance Taxes	Varies by substance from 1.6% to 2% of value

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*Source: Commerce Clearing House, *State Tax Guide*.

(a) Application of tax is same as that of title unless otherwise indicated by a footnote.

(b) Tax scheduled to terminate upon the redemption of all bonds issued by the Alabama State Docks Department.

(c) Metallic minerals, coal, oil shale, and oil and gas.

(d) Clay, gravel, phosphate rock, lime, shells, stone, sand, and rare earths.

(e) Maximum ratio set annually by administrative action.

(f) Petroleum, oil, gas, and other hydrocarbons.

(g) Figures are the total parts of the tax designed for conservation and pollution prevention.

(h) St. counties impose an additional 1 percent tax.

(i) The tax was suspended pending a determination by a court of last resort as to its constitutionality.

(j) First occurrence in the state of any use of natural gas upon which no severance tax has been assessed or is not subject to any U.S. import tax or tariff.

(k) Plus a fee (not to exceed 1 percent of gross value) on oil and gas produced the previous year.

(l) All ores.

(m) $1.25/ton plus a surcharge up to 1.6 percent based on the percentage iron content of the ore, except for semitaconites which are taxed at 10¢/ton plus the surcharge.

(n) Plus miscellaneous taxes on royalties and additional tax based on the percentage copper-nickel content of the ore.

(o) Metals and gems and precious stones.

(p) Cement and gypsum or allied products.

(q) Natural resources except oil and gas.

(r) Oil, gas, geothermal energy, coal, and uranium.

(s) Any natural resource.

(t) Asphalt, oil, gas, uranium, and metals.

(u) From July 1, 1979, until June 30, 1981, operators of coal mining operations must pay this tax.

(v) Only imposed on annual market value if above $100,000.

(w) No taxes shall be assessed against natural gas that is produced for a period of one year after April 2, 1979.

(x) Metals, oil, gas, and uranium.

SUMMARY OF THE COST TO THE CONSUMER OF THE MONTANA SEVERANCE TAX
1979

Utility	Quantity[1] (1000 ton)	Cost of Montana Coal			Sev Tax per ton[4]	Sev Tax paid[5] X	Resdt'l % of Total Kwh Sales[1] ÷	Avg # of Resdt'l Customers =	Annual Cost per Resd'tl Customer
		Dlvrd[1]	F.O.B.[2]	C.S.P.[3]					
Commonwealth Edison	4,185.2	$33.62	$15.83	$11.28	$3.38	$14,146,000	27.7	2,676,826	$1.46
Interstate Power	247.4	24.46	7.97	5.49	1.65	408,000	20.8	108,855	0.78
Detroit Edison	2,500.0	26.17	13.36	9.45	2.84	7,100,000	27.8	1,603,624	1.23
Minnesota Power & Light	2,783.6	17.68	7.84	5.50	1.65	4,600,000	8.0	91,422	4.03
Northern States Power	8,348.2	16.51	5.50	3.73	1.12	9,350,000	24.4	949,499	2.40
Montana Power Company	1,942.5	5.75	5.48	3.72	1.12	2,168,000	22.5	187,701	2.59
Lower Colorado River Auth.	804.5	35.55	6.83	4.70	1.41	1,134,000	4.6	16,566	3.15
Wisconsin Power & Light	2,064.6	15.12	6.44	4.41	1.32	2,725,000	38.8	259,550	4.07
Central Illinois Light	686.9	27.89	11.57	8.08	2.42	1,662,000	31.3	163,455	3.18

[1] Source: Form 423
[2] F.O.B., freight on board, delivered cost less transportation charges.
[3] C.S.P., contract sales price, F.O.B.=CSP + .3CSP[a] + .005CSP[b] + (.45)(CSP)(Mill levy)[c] + $0.35[d] + .02 F.O.B.[e]
[4] 30 percent of CSP.
[5] Source: Annual Report, S.E.C. Form 10-K, or Uniform Statistic Report.
[a] Montana Severance Tax.
[b] Resource Indemnity Trust Tax.
[c] Gross proceeds (local ad valorem property tax).
[d] Federal Abandoned Mine Reclamation Fee.
[e] Federal Black Lung Tax, has an upper limit of $0.25 per ton.

STATEMENT OF THOMAS E. TOWE

Mr. Towe. Thank you.

Mr. Chairman, I have submitted a prepared statement. [See p. 221.] If it is all right with you, I would like to briefly summarize some of the things I would like to comment on.

As Pat indicated, I am the chief sponsor of the bill. It was enacted in 1975. I have done quite a bit of study, I might add, of the coal taxes throughout the Nation. I have really compiled all of them, and there is no other State that uses the same base that Montana does, that is, a base of the invoice price of the coal less production taxes.

We are unique in that. However, every single bill that has been introduced in Congress this year uses our base, and perhaps you are trying to give us a message.

Perhaps I should be flattered by the fact that you are copying my language, but I am concerned that it is very clearly targeted at Montana and, in fact, it is only Montana and Wyoming that would be affected. North Dakota does have a higher tax than Wyoming, but their coal is not valuable enough at this point to put it on a railroad car and ship it anywhere. So it is not covered because of the mine mouth generation.

First of all, I would like to say I think it is misleading to refer to the tax as a 30-percent tax. It is not a 30-percent tax; it is a 22.5-percent tax, not much different from Minnesota's 20-percent effective tax on iron ore, I might add.

But in going much further than that even, and that is because of the reductions from the original invoice price when you get to take out all the tax, itself; but further than that, if you look at it at the delivered price, it is only 9.8 percent, or as it impacts the consumer, the person who finally pays it, the electric consumer, it is 2 percent and even less than that if you blend other coal or average it with other fuels—three-quarters of 1 percent for all of our customers averaged.

Second, it is misleading to say our tax frustrates the national energy policy of converting to coal. I am sorry the gentleman from Ohio is not still here, but I was in Pennsylvania, in western Pennsylvania, recently, and I was much impressed. The very same thing he said: The coal companies are going out of business. There is not enough demand for coal. They are having to close down; they are not producing enough coal.

That is not our market area, so that is not impact by Montana. The fact is that the energy companies are not converting to coal as they are required by the National Energy Policy Act by 1985 and 1990. It is not being done.

Is this a smokescreen per chance? Is this to divert Congress' attention away from an area which is, I think, much more critical, and that is, why aren't they converting to coal?

And, third, I think it is misleading to say there is an enormous increase in burden on electrical consumers. That is just not the case. I have attached to my testimony a chart, and I would like to call your attention to it. [See p. 234.]

I have called the departments of revenue of each of the States that receive coal and burn coal for electricity in Montana, and for the acting chairman's benefit, I threw in Indiana, although you are not burning any of our coal, to my knowledge. But each one of these States, except that now Texas just recently repealed theirs, but each one of these States has a sales tax on electricity. It is 5 percent in Illinois. In Michigan, for the chairman's benefit, and I was somewhat surprised at this, not only does the State of Michigan collect 4 percent on electricity produced from Montana coal, but also the city of Detroit collects an additional 5 percent. That is a total of 9 percent, and the revenues the city of Detroit is collecting on just electricity, the city of Detroit and the State of Michigan, from Detroit residents, is one-third of our entire tax collection, and this seems significant.

In Illinois, 10 times our entire severance tax collection is collected each year by these taxes.

Another chart that I think is attached to the Congressman's testimony—I think it is most interesting. [See p. 213.] On a monthly basis, using 1977 figures, the people in Detroit, Mich., pay $2.22 on an average to the State and the city for taxes. They pay to Montana 3 cents, $2.22 as opposed to 3 cents.

It is also, I think, misleading to say that Montana is reaping a big windfall at the expense of other States.

And I have another chart, which I have included, and I will make a quick reference to it. Reference has already been made. The State of Alaska, for instance, is collecting 40 times more tax than we are on oil, when you include all the oil impacted tax.

The State of Texas is collecting 20 times more than we are.

The State of Louisiana is collecting 10 times more than we are.

Then I want to address another question, the question I think the acting chairman himself raised: At what point does it become irresponsible? I don't think we should have to defend our tax and every penny that we collect in tax, but I will say that I think we can. And I have no hesitation in saying that we need that revenue, and that if we don't have that revenue, we will be here in Congress asking for moneys that all of the taxpayers will have to pay instead of just those who use it.

For example, the administrative costs for administering the Reclamation Act, the Plant Siting Act, the Water Quality Act, the Air Quality Act—all of those things cost money. We are using about half of the money that we allocate to the general fund each year for those purposes.

There is very little extra goes into the general fund and the total that goes to the general fund is 19 percent at the present time.

Impacts—we have allocated about 25 percent of all of our coal tax collections for the first 4 years up through fiscal year 1979 to impacts; 15 percent administered by the coal board, some $20 million, and another 10 percent has been set aside for roads. We are just scratching the surface.

We had hoped that maybe we would get some Federal help for those roads. It didn't come through. The $14 million is not enough for the $54 million that we have got to have to make those roads decent in those impacted areas. We are still waiting, and I guess we are going to have to set aside some more moneys.

Although we spent over $20 million in impacts so far with our coal board, we had applications before our coal board last month of; $28.7 million, and our whole budget for the coal board this year was only $6.5 million. They gave half of it last month, and there is just not enough money. That is not unique to Montana.

North Dakota, according to the REAP study, there is some $10 million shortfall over a 7-year period.

In a recent study that the Old West Regional Commission did, Wyoming shows $27.6 million shortfall in 12 counties alone in impacts over the next 5 years. There is no funding to take care of those, and with all of the existing taxes applying. So I think that we can justify the tax with impacts alone.

Somebody raised the question earlier, how much money is the Federal Government giving toward these impacts? I want to give you some figures on that. I happen to have them for Montana.

The figures are as follows: The 601 Federal Impact Assistance Act, fiscal year 1979, $286,000; fiscal year 1980 is $1.080 million.

How much money is one-half of our share of Federal royalties? $555,000. Our coal board had $28.7 million in applications in their bimonthly meeting last month alone. We are not anywhere near getting enough money from the Federal Government.

I don't care. We don't need the Federal Government's money. We can use and take care of our impacts, but we need your permission to do so.

I guess you could probably put a limit on it, and I suspect that the rest of the Nation can rape and pillage and plunder Montana's land, to take that coal for cheaper energy; but it seems like there ought to be something left over. When that is gone and we are an impoverished State, where will we be then? Another Appalachia?

Our trust fund that will take care of that is the only real saving factor we have. We look to that trust fund to make sure we are not a poor State and because of the unknown problems of the future as well.

Let me just conclude by saying that I think it is a dangerous precedent to do something like this. If, in fact, you can reduce Montana's taxes in order to get cheaper energy for the rest of the Nation, what is to stop Congress from reducing Texas oil and gas taxes in order to get cheaper gasoline or cheaper heating? What is to prevent this Nation from reducing Minnesota's iron ore taxes to get cheaper steel products, or Oregon's wood products' taxes in order to get cheaper lumber to build our houses with; or what is to prevent us from limiting Michigan's single business tax to get cheaper automobiles, and that single business tax in Michigan is very similar to our severance tax when you really analyze the net effect of it.

That is why I say very strongly that I think these bills are a mistake, will promote regionalism that we really can't afford in this country, and I really doubt if the end result of reducing costs to consumers will even come about.

I haven't really seen any utility companies reducing rates lately. Thank you.

Mr. SHARP. Thank you, Senator.

[Testimony resumes on p. 236]

[Mr. Towe's prepared statement and attachments follow:]

The Big Sky Country

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PREPARED TESTIMONY
HEARING ON HR 6625 AND HR 6654
SUBCOMMITTEE ON ENERGY AND POWER
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

My name is Thomas E. Towe, from Billings, Montana. I am a state senator, and I was the chief sponsor of the coal tax legislation Montana enacted in 1975.

I want to thank you for allowing me an opportunity to speak to this legislation which we in Montana view with absolute horror.

First, this legislation clearly targets Montana and Montana's coal tax. It is, therefore, special legislation. It proposes to limit the taxes collected on coal to 12 1/2%. The 12 1/2% is, however, based on the invoice price less Federal, State, and Local production taxes. The only state which uses a similar base in the computation of a severance tax, that I am aware of, is the State of Montana. It is very clear that Montana has been singled out by these bills for punitive action. I fear that the utility companies who are pushing legislation to limit our tax have greatly misled many people.

Second, it is misleading to refer to the tax as a 30% tax. It is not 30% of the invoice price but, as I indicated, 30% of the invoice price less all production taxes. This amounts to approximately 22 1/2%. In addition, a resource indemnity trust tax applied to all minerals of 1/2 of 1%, and local property taxes of approximately 4 1/2% adds to a total tax burden of approximately 27.5%. It amounts to approximately 9.8% of the delivered price of the coal, however. Nearly 60% of the delivered price of coal to midwestern utility companies who purchase Montana coal is transportation costs. Thus, as a percentage of the delivered price, it is considerably less than 27 1/2%. Finally, when the cost is passed on to the ultimate consumer of electricity generated from Montana coal, it amounts to approximately 2%. In other words, the customers of a utility company that uses Montana coal as the only fuel would pay only about 2% for all of Montana's state and local coal production taxes. Since most utility companies blend Montana coal with other fuels, the average cost to the average mid-western utility customer is 3/4 of 1%. That is the cost to the ultimate consumer.

Third, you have been told our severance tax on coal frustrates the national energy policy of converting to coal. I submit to you this is not the reason for the introduction of this legislation. This legislation is the product of the utility companies -- the same utility companies that are attempting to raise the same argument in court. The coal companies and mid-western utility companies have challenged our coal tax in court on the grounds that it is an undue burden on interstate commerce and frustrates the national energy policy. To date they have been remarkably unsuccessful in their court challenge and I suspect this effort and this legislation is an indication they have all but given up on their court challenge and feel that Congress is an easier mark for them.

I submit this argument is a smoke screen to cover up the real problem. The real problem is the hesitancy of utility companies throughout the nation to convert to coal. Even though it is mandated by the National Energy Policy Act of 1978, it is not being done and probably won't be done until these companies are forced to do so. This situation exists in the Northeast and the Southeast and the Far West -- areas that do not use Montana coal and cannot use Montana coal tax as an excuse.

Fourth, you have been told that Montana's coal tax increases the burden on already overburdened utility consumers. Again, this is not the reason for this legislation. If this were a genuine concern, you would have to address the sales tax and public utility tax collected by the home states of nearly all the co-sponsors of this legislation. The Mid-Western states all collect a tax on electricity. Illinois, for example, collects a 5% Public Utility Tax which yeilds $444,000,000 a year compared to Montana's $42,000,000 in total coal tax collections. The people in the City of Detroit pay 9% (4% to the State plus %5 to the City of Detroit) on all electricity used by the citizens of that city. Michigan collects $112,000,000 a year on gas and electricity sales tax; the City of Detroit collects an additional $14,500,000 a year on its "use tax" on electricity alone. The same situation exists in every other Mid-Western state. I have attached a chart showing the nature of the tax, the percentage of tax, and the revenue collected in each of these states.

By comparison, Montana collects only 2% on the ultimate customer if Montana fuel is the exclusive fuel and 3/4 of 1% on an average when other fuels are considered. Obviously, if this nation is concerned about the cost of utilities to the utility consumer -- particularly the person on fixed and low incomes --you should be addressing those sales taxes and public utility taxes which have a far greater burden on the consuming public than Montana's coal tax. Furthermore, these states don't even have the problems associated with coal production, including administering reclamation laws, taking care of impacts, and providing for funds to solve future problems caused by coal development. I suggest that for most of the sponsors to point the finger at Montana while their own states add far greater burdens to the cost of utilities with far less justification is the absolute height of hypocrisy.

Fifth, you have heard that Montana is collecting too much money from its resource at the expense of the rest of the nation. Again, this is not the reason for this legislation. In this connection, I think it is ironic that there are sponsors of these bills from the State of Texas and from the State of Louisiana. Those two states, along with Alaska, New Mexico, Oklahoma, and other oil producing states, are collecting far more monies from severance taxes than the State of Montana. Nine other states collect more severance tax than Montana. Montana's coal severance tax collection of $75 million a year is a mere pittance when compared with Texas' oil and gas collections of $1.4 billion (1981 estimates) Alaska's total tax package of $3 billion (1981 estimates), and Louisiana's $751 million (1981 estimates). I have attached a chart showing these states are collecting between 10 and 40 times the revenue that Montana is collecting, and they don't have half of the impacts and unsolved problems to worry about. For sponsors from states collecting over $1 billion in oil and gas severance tax to point their finger at Montana's $75 million is hypocrisy that is exceeded only by the hypocrisy of the sponsors from states who collect a sales tax on electricity.

Sixth, it is apparent that Montana coal and Western coal can be used to provide cheap energy for the rest of the nation. In order for this to happen, it must be strip mined, and that means enormous reclamation problems, permitting problems, pollution problems, and a number of other problems. Montana once proudly possessed vast quantities of hard rock minerals, including gold, silver, and copper, for which it received the nickname the Treasure State. Those minerals have largely been exploited and are gone and will never return. Our mining economy in western Montana is suffering and we have very little to show for the once valuable natural resource our state proudly possessed. Now we realize we have comparable vast wealth in the coal fields of eastern Montana. We have made the decision to allow the coal to be mined, but if the rest of the nation expects to rape, pillage and plunder our land and our resources to provide cheap energy, at least it should be expected to pay the out-of-pocket costs of government services, to provide for contingencies for the unknown problems that Montana will face in the future, and to provide for the economic depression that will follow as surely as night follows day when the coal mines dry up and wither away.

Congress has the power to exploit Montana's non-renewable resources. Congress has the power to take the coal even if it means the ruin of our environment, and the ruin of our economic stability; Congress can do this without paying the full tab in terms of government services and hidden costs. We in Montana are painfully aware that coal and poverty tend to run hand-in-hand in other parts of this great country. We do not want to end up a poverty stricken state and will fight the Federal government with all of our strength to protect our environment and our economic stability. I sincerely hope you will think twice before you allow our land, our environment, and our economic stability to be raped, pillaged and plundered to provide cheap energy to the rest of the nation without paying the full tab.

Seventh, the costs of government services and hidden costs in coal development are high. I have outlined some of these costs in a separate article which I am attaching to this testimony. Montana has costs of administering its Strip and Underground Mine Siting Act, and administering its Strip Mine Coal Conservation Act, and administering the Surface Mining Control and Reclamation Act passed by Congress in 1977. Additionally, Montana has evidenced shortfalls in funding of its Plant Siting Act. The costs of administering the Air and Water Quality Acts and other environmental laws are high. In the last session of the legislature we budgeted nearly $8 million to cover all of these matters, many of which were directly related to the mining and use of coal. This amounts to 19% of the $42 million collected in FY 1979 -- the exact percentage allocated to our general fund from the coal tax.

A second government cost is the costs of local impacts. When a small community is increased from 200 to 2,000, then to 3,000, and finally to 8,500 people, sometimes almost overnight, the costs of providing school services, streets, sewer systems, water systems, police protection, fire protection, and many other government services, are enormous. Before our coal tax was enacted, the local farmers and ranchers --many of whom vigorously opposed the coal development altogether --had to pay increased property taxes to pay for these services. The extra revenue available to the local communities as a result of coal development is not sufficient to carry the burden. Further, it takes several years for the property to be added to the tax roles and for the tax to be collected.

Even the monies we have allocated from our coal tax to cover direct impacts -- approximately 15% during the first four years the coal tax was in effect -- is insufficient. For example, last month the Coal Board had applications pending of $28.7 million. It had but $3.3 million to meet these requests and only $6.5 million during the entire fiscal year 1980. Obviously, decisions are made on the basis of availability of funds and not on the basis of need.

Another $14 million (over 10%) has been allocated to roads in the impact area. Road construction seems to be the biggest single cost of all impacts. The projected need for road construction in the region containing the coal fields, however, is approximately $54 million -- far short of the funds available.

Although our Coal Board has granted over $20 million in impact funding since 1975 and another $14 million has been set aside for roads, the Federal Impact Assistance Program, Section 601, has provided only $286,000 in FY 1979 and $1,080,000 in FY 1980. We simply cannot depend on the Federal government to help us in times of need.

Montana is not alone. The most comprehensive impact study ever conducted was conducted by the State of North Dakota called the North Dakota Regional Environmental Assessment Program. Under their "modified development level" this report concludes a shortfall of $10 million can be expected over the seven year period between 1976 and 1983 even if every last penny collected from coal taxes were used to take care of impacts. Further, a recent study of twelve Wyoming counties shows a shortfall of $27.6 million in these counties over the next five years, assuming use of all available funds under present funding programs.

We have not met and are not meeting the impact needs of the impacted communities. If you further restrict and limit our ability to collect coal severance tax in the Western states, we will have no choice but to turn to Congress for more money. In other words, if you limit our ability to collect the tax, you will have to pay for it by increased appropriations to the impacted areas. It seems much preferable for the burden to fall on the users and not on all the nation's taxpayers. Why not let the states handle their own problems rather than making the states subservient to the Great White Father in Washington.

There are still other government needs for revenue connected with coal development. We must not forget the "tail end" impacts when the coal is gone in a particular area and the mining moves elsewhere. Who will pay for the school bonds that are still unpaid and the street and sewer SID's? How will we cope with the economic depression caused by the move to another area? Also, government has an obligation to hold back something to take care of the unknown problems of the future. We don't yet know how successful reclamation will be in the arid Montana land, and we don't know what effect the potential loss of ground water will have on the agricultural industry in eastern Montana. Coal-mining companies do not have a strong history of taking care of these future problems; we must set some monies aside for them.

No part of the coal tax revenues collected by the State of Montana is going for frivolous purposes. No part of the coal tax collection has gone to tax relief or to reduce the tax burden in other areas. We are wisely setting aside a substantial portion of the revenue in a trust fund so money will be available to take care of the "tail end" impacts, the unknown problems of the future, and the economic dislocation that will be caused when the mining is over and the coal is gone. Montana will not become another Appalachia if you allow us to continue the wise use of revenues from our Montana coal tax.

One more thing. I haven't even mentioned some of the less tangible problems. A transient population tends to result in more social problems, more crime, and greater alcoholism. It will mean a change of life style for many Montanans. Wally McRae, a rancher near Colstrip who vigorously opposed any coal development whatsoever for our state raises a legitimate question when he asks, "What is the cost to my children who have to attend a school where 70% of the students have used drugs in one form or another?" He also asks, "What is the cost of having 23,700 tons of sulphur dioxide per year dumped on our agricultural lands from Colstrip Power Plants 1 and 2?" So far Wally McRae has lost the battle. Montana will mine coal to light up the homes of the rest of the nation. We would hope, however, that the rest of the nation would show some gratitude for the inconvenience such a decision will cause to the citizens of Montana.

When compared to the severance taxes collected by other states on other fossil fuels on a BTU basis, Montana's coal tax compares very favorably. Montana's coad tax is approximately 9.97¢ per million BTU's. The following severance tax on oil is collected by the following states:

Texas	8.84¢
Louisiana	16.63¢
Oklahoma	12.58¢
New Mexico	10.76¢

Reducing the tax to cents per million BTU's is the only fair comparison because of the numerous variable factors that otherwise cloud the picture. Again, Montana is not the highest when severance taxes are compared properly. Only approximately 11.6% of our total revenues comes from coal taxes. By contrast, in the State of Louisiana, 29% of that state's revenues come from severance taxes and 18.9% of the total revenues from the State of Texas come from severance taxes. Since these bills will not affect these higher taxes in these other states, we must ask the question, "Why pick on Montana?". If the rest of the nation wishes to rape, pillage and plunder our land and our resources to provide cheap energy, the least it could do is to pay the bonified out-of-pocket costs of government services and furnish the revenue necessary to protect our state, its environment, its economic stability, and its people.

Finally, and most important of all, the precedent set by these bills will adversely affect every man, woman and child in this country. If they pass, it will be an open invitation to pass other tax limitation bills. Congress can prevent Michigan from imposing their Single Business Tax because the rest of the country wants cheaper automobiles. Congress can limit Minnesota's 15% severance tax on iron ore because the rest of the country wants cheaper steel products. Congress can reduce Oregon's Wood Products tax because the rest of the country wants cheaper lumber to build houses with. The examples are endless. Our federal system would then be in shambles.

An early, ardent advocate and present defender tells...

Why a 30% coal tax?

by
Thomas E. Towe
State Senator, Billings, Mt.
Chief Sponsor of
Montana Coal Tax Law, 1975

Montana's 30% coal tax is under attack. It is being challenged in Court and it is being challenged in Congress. Let us look at the tax and the reasons for its existence.

The Effective Rate

The effective tax rate is not 30% but 22.26% of the invoice price of coal F.O.B. mine. Coal companies are allowed to deduct from the invoice price all federal, state and local production taxes before applying the 30%. Additionally, 45% of the gross value of the coal less taxes is included in the taxable valuation of each county against which counties and school districts levy property taxes. Finally, one-half of one percent is levied against coal as well as all other mined resources for the Resource Indemnity Trust Fund. All three taxes average approximately 27¼% of the invoice price of coal. That amounts to approximately $2.00 per ton or 10 cents per million B.T.U.'s.

The 7 principal customers of Montana coal—7 midwestern utility companies—pay considerably more for transporting the coal to their plants than they do for the coal itself. Sixty percent of the delivered price of the coal is in transportation. The Montana Production Taxes amount to 9.8% of the total delivered price of the coal.

Almost all coal mined in Montana is under long-term contract—20 to 30 years in length. These contracts provide automatic escalation clauses that allow the coal companies to pass the entire amount of the increased tax burden on to their customers, the midwestern and southern utility companies. In turn, the utility companies passed their costs on to their customers through the respective Public Service Commissions. The net effect of Montana's Production Taxes is approximately 2% of the electric bill of the customers who purchase electricity from the midwestern and southern utility companies.

In fact, all but one of the southern major midwestern utility companies which purchase Montana coal blend Montana coal with other coal. The net effect is a cost to their electric residential customers of approximately ⅗ths of 1% for Montana's total Production Taxes.

Yet those same states all collect a sales tax on that same electricity. For example, Illinois collects 5% under its Public Utility Tax Act. Minnesota collects 4%, Iowa 3%, Indiana 4%, Wisconsin 4%, and Michigan 5%. Thus, these states are collecting at least twice as much on the end product as we in Montana and they don't have any of the impacts, the reclamation problems, and other residual problems to deal with.

Reasons For A High Mineral Severance Tax.

A number of reasons can be advanced for a high mineral severance tax.

I

The natural wealth of a state should confer some benefit to that state.

A sovereign should share in the natural wealth within its boundaries. Once the resource is depleted and the wealth is gone, it cannot be renewed and the State has lost forever some degree of its economic viability. Unlike a manufacturing process or agricultural process, this wealth cannot be renewed.

Montana is particularly susceptible to this argument. Its nickname, the Treasure State, referred to a fabulous wealth in hardrock minerals. The value of the treasure mined from the "richest hill on earth" in Butte between 1880 and 1950 is staggering. Now, however, the boom is over and the bust is in full force. Butte is but one-fifth of its original size and presents an enormous urban renewal problem. Decay of the city center is probably irreversible. Essential services are expensive and the mill levy is higher than in any other major city in Montana.

Other than a gigantic hole in the ground and a massive urban renewal problem, Montanans have very little to show for the fabulous treasure that were wasted in Silver Bow County. The fabulously wealthy copper kings did not even leave vestiges of their wealth in our state. Instead, the Corcoran Art Gallery in Washington, D.C., the Law School at the University of Virginia and Stanford University are received [illegible]

Although that treasure is nearly gone with very little to show for it, our treasure in coal is just now being fully appreciated. According to U.S. Bureau of Mines statistics Montana has something like 25% of the nation's coal supply and 10% of the world's coal supply. With the growing demand for coal world-wide there can be little doubt that our "black gold" may prove to be more valuable than all the other minerals for which Montana was named the Treasure State. Only this time, because of our 30% coal tax, we will have something to show for that fabulous treasure once the coal is gone.

II

A review of other coal areas in the United States suggests that coal and poverty go hand-in-hand.

Appalachian states of West Virginia, K
and Tennessee are known for two things.
poverty. There is much evidence to s
genuine connection between these two th
example according to a recent study
companies controlled 34% of all the
Morgan County, Tennessee but they p
3.6% of all property taxes in that coun
same conclusion is supported by the tax of
Kentucky. We in Montana are determin
let this happen in the coal fields of
Montana.

III

The governments need the money.

This need can be broken down in
separate categories.
First there is a need for funding to ad
finance government participation and sup
of the development itself. For exam
Montana the Strip Mine Coal Conservat
the Strip and Underground Mine Siting A
the Montana Strip and Underground Recla
Act are all administered by the Departm
State Lands. Additionally, the federal
Mining Control and Reclamation Act o
places certain requirements on the state o
state's permanent regulatory progr
approved. The burden on the state in rev
and granting permits, reviewing mining
reviewing and approving reclamation
inspecting the mines, and doing all the
things required of those acts is considerab
The cost to the state far exceeds th
application fee that is received for each
permit application. For example, o
application for the north extension of the
Decker Mine, the Department of State
assigned five people each of whom worke
month on the application not countin
Administrator's time and the office overhea
Reclamation budget for the Montana Depa
of State Lands exceeds $400,000 per year a
budget for the next two fiscal years contem
nearly $6 million a year for coal re
administration and reclamation matters. Al
some of this funding is being provided b
federal government, as mining activity inc
the costs will undoubtedly increase to the s
In addition, there are the administrative co
administering the Plant Siting Act which c
into effect before permits are granted fo
construction of any major steam gene
facility, coal gasification plant, or other uti
energy related plant as well as all ele
transmission lines and pipe lines. Althoug
filing fees are high and are intended to pay
the governmental costs of reviewing
applications, the experience of the Departm
Natural Resources and Conservation, which
lead agency administering the Plant Siting A
Montana, is that the filing fee rarely covers a
costs. The $1.2 million application fee paid b
utility companies who applied for a perm
construct Colstrip Units 3 and 4 was far
than the money spent processing that applic
Currently approximately $200,000 per ye
budgeted out of the general fund to take ca
energy matters in the Department of Na
Resources and Conservation in Montana.
Finally, the administration of Air and W
Quality Acts require considerable administ
expense for the Department of Health
Environmental Sciences in Montana. Con
monitoring takes place at the mine sites and a
utility sites. An allocation to coal developme
coal related environmental health problem
not been attempted but total environmental h
budget including air quality, water qu
occupational health matters, and solid w
disposal receives a general fund expenditu
approximately $1 million per year. Again
certainly appropriate that some funding be
available to the state general fund to cover t
added expenses and burdens of state governm
caused by the coal development itself.
The second category of government
includes the local impact costs. The sleepy
farming community of Colstrip increased
population from 200 to 2,000 almost overn
when the coal boom of the early 70s first
Montana. Now with the approval of Colstrip U
3 and 4, the population has increased from 2
to 3,000 in the last six months and is expecte
hit a peak of 8,000 in 1981. The deman
governmental services is enormous. The sc
system is impacted

Why 30% tax?

system was initially unprepared to deal on this to handle the enormous increase in school children. Although the Montana Power Company did considerable planning and provided considerable assistance, the normal community services just were not adequate because of the unavailability of funding.

Impact funds are needed for tangible items such as expansion of existing sewer systems, water systems, streets and street maintenance programs, as well as intangible things such as law enforcement and fire protection. In Colstrip, the farmers and ranchers in the surrounding area who vigorously opposed the coal develo[illegible] in the first place ended up paying higher property taxes to pay for these added burdens. It takes some time for the new mining equipment and facilities to be appraised, assessed, placed on the taxable rolls and finally taxed. Thus whatever relief was provided by the increased base of the county was not immediately available. The total mill levy for persons living in the Colstrip School District in Rosebud County increased 42% between 1972 and 1974. Because of the impact funds administered by the Coal Board we hope this increase will not reoccur during the construction of Units 3 and 4.

The social costs of resource development can also be very large. Frequently the impacted communities are small towns without full time and experienced public officials and planners. The transient nature of the population plus lack of recreational facilities and traditional home town pride adds to the problem. Thus, increased crime, increased family problems, and alcoholism are not uncommon. These things have been documented in the numerous studies of the impact areas in Wyoming.

For example, Doctor Julia Uhlman of the Denver Research Institute and former Director of the Wyoming Human Service Project surveyed 40 separate energy communities. She found that 70% had no mental health facilities, 57% had no alcoholic counseling and 47% had no movie theater. Most of them had no family planning services. Because the work force is generally considerably younger and the need for recreational facilities and daycare centers is greater, these problems are even more important in these impacted communities.

Basin Power Cooperative and 5 other public power groups recognized these social problems and impact problems would occur in connection with their construction of the gigantic Missouri Basin Power Project in Wheatland, Wyoming. Consequently, they gave $13 million to the local governments at the initiation of the project to take care of these problems; it proved to be a profitable investment simply because the turnover rate of employment was substantially reduced when the social problems not normally addressed by underfunded local governments were adequately taken care of.

In addition, a number of changes occur which cannot be alleviated by money, grants, or government assistance. For example, Wally McRae, a rancher in the Colstrip area, asks the question, "What is the cost to my children who attend a school where 70% of the students have used drugs in one form or another?" Also he asks, "What is the cost of having 23,700 tons of sulphur dioxide per year dumped on our agricultural lands from Colstrip Power Plants 1 and 2?"

Finally, we must not ignore the tail-end impacts. For example, in Montana the new plants and mines are put on a 35 year depreciation schedule. There is much speculation that the coal in the Colstrip area will be largely gone in 35 years and the development will move elsewhere. At that point what will happen to the School Districts' long-term bond obligations still outstanding? Assistance must be available for these tail end impacts and for the general readjustment that is necessary.

The North Dakota Regional Environmental Assessment Program conducted a $4 million study of impacts on North Dakota. They concluded a combined additional cost over available revenues based on the 1978 level of development for the years 1976 through 1983 would be [illegible] million. Based on what they termed a modified development level these figures increased to [illegible] million. [illegible]

A recent Old West Regional Commission Report identified capital needs in 12 Wyoming counties due to coal development at [illegible] million within the next five years. The same report showed available funding to meet these needs at [illegible] million leaving a [illegible] million shortfall.

At the present time there are requests before the Montana Coal Board amounting to $28,782,[illegible]. By contrast, the Coal Board has available to it only $6,500,000 to meet these requests. Their decisions are no longer controlled by need but are dictated by available funds. Additionally, Montana is not meeting the needs for road construction and improvement in the coal development area. The Montana Highway Department identified a need for $54 million for this purpose in 1975. To date only approximately $13.5 million have been received from the coal tax for this purpose leaving a shortfall of over $40 million.

We can't expect much help from the federal government to cover these impacts. In fiscal year 1979 Montana received $296,[illegible] and in fiscal year 1980 we received $1,800,000 from funds specifically appropriated for coal impacts. This is miniscule in comparison to the $20 million allocated by the Coal Board since its creation in 1975 and the existing $22 million shortfall that it is facing at the present time because of lack of funds.

Third, revenue is needed to address the problem of economic depression in the mining area once the mining ceases. Fossil fuels by their very nature are limited in supply. Someday they will be gone. Economic stagnation and then economic depression will set in and cause enormous governmental problems. Revenue is much [illegible] now to look to the economic future and economic stabilization of the coal areas in Montana. Also, once the fossil fuels are gone we must replace them with some other form of energy. We do have an obligation, I think, to set aside some of the revenue from our coal mining for research and demonstration of renewable energy resources.

IV

Government should hold back something to take care of the unknown problems of the future.

Many of the environmental and other costs of coal development have not yet been fully detected. What will happen to the ground water in all of Eastern Montana under extensive strip mining of coal? How will that affect the well water supply that now supports much of the agriculture in the area? Will the sodium absorption ratio or the leach alkali or other chemical affects on ground water, poison the ground water normally used for stock watering and other agricultural purposes? Also, Professor Robert Curtis of the University of Montana states that it has taken a minimum of 10,000 years for the soil and its inhabitants to develop in Eastern Montana. The soil is not something that can be stored in a pile while mining goes on and then spread back over the ground. He suggests that restructuring and renewed weathering balances in the soil necessary for total reclamation will take hundreds of years in the arid west. Although not a single acre has yet been released from the bond required under Montana's Strip and Underground Mining Reclamation Act, can we be sure that all of the problems will be detected and corrected under the administration of this Act?

I have been impressed in reviewing the problems faced by older coal mine areas.

For example, the deep mines in Pennsylvania caused enormous black lung disease problems that now cost current miners approximately 42% of their total payroll. Additionally, underground mines in Pennsylvania are filling up with ground water and [illegible]; land slides very destructive to buildings [illegible] located on the surface. No provision was made to take care of these problems by the mining companies—many of whom are no longer in existence. Mining in Eastern Montana will undoubtedly cause different problems but we cannot underestimate the unknown problems yet to be encountered and detected. Funding should be set aside now while money is available to take care of these unknown problems.

V

Some people advance a theory that a royalty or fee should be charged by government for the destruction of a public resource.

When a person is given a patent to real estate and subsequently conveys title by deed, he is given the right to use the property for an unlimited period of time. As zoning ordinances, conservation laws and other restrictions clearly illustrate, however, his rights to that property are not unlimited. As a part of the land within the territorial jurisdiction of the United States or the state in which it is located, certain rights are reserved to the government. In effect, the person who received the patent or the deed is expected to become a good steward of the land and take good care of it during his stewardship. Because of its very nature, he cannot dispose of it or destroy it.

By contrast, mineral rights are quite different. The owner of mineral rights has the right to extract and remove the mineral and sell it so it no longer exists. This country's treatment of mineral rights is not typical of the rest of the world. The United States is one of the few nations in the world in which property rights in minerals can be vested in private individuals. The overwhelming majority of the developing nations in Asia, Africa, and Latin America do not allow minerals to be vested in individuals; minerals are defined in those countries as part of a national patrimony with the state as trustee. Even in industrial nations such as Canada, Australia, and Erie which allow private ownership of minerals, the overwhelming portion of mineral rights is retained by the state.

Thus, the argument can be persuasively presented. The minerals should belong to all of the people. They are a part of the sovereign nation, the treasury of the people who constitute the country or state in which the minerals are found. The state, therefore, is altogether justified in extracting a substantial fee for the extraction and sale of these minerals at a private profit. Once they are removed and sold they can never be replaced; they are gone forever. If this government allows private profit from the use of this public resource, at the very least the state should extract a tax sufficient to pay for all of the problems caused by the mining and removal. Prudent government officials would also want to set aside funds to provide for the future costs and economic well being of the people once the public resource is gone.

Montana's taxes are not out of line when compared with other state taxation of natural resources.

Although, as a percentage of the invoice price the Montana, Wyoming and North Dakota taxes are much higher than other states, the same is not true when you compare the taxes on a cents per ton basis or on a cents per million B.T.U.'s basis. Thus, for example, the State of Kentucky levies a 4½% tax which amounts to $1.23 per ton—about the same as Wyoming and higher than North Dakota. Because of the different heat values in the coal a much better method is comparing the taxes according to the cents per million B.T.U.'s. In this regard Montana's coal tax at 9.97 cents per million B.T.U.'s compares very favorably with the severance tax on oil collected by the following states:

Texas	8.84 cents
Louisiana	16.63 cents
Oklahoma	12.58 cents
New Mexico	[illegible] cents

More importantly, however, is the amount of revenue collected from natural resource taxation. In Montana we collected $42 million from our coal severance tax in fiscal year 1979. This amounts to 11.6% of our total tax revenues for the state.

By contrast in 1977 the State of Louisiana collected $495 million from its severance tax, primarily on oil and gas. In fact this tax has been in effect ever since the days of Huey Long. At the present time it amounts to 29% of the state's tax revenues. In fiscal year 1979 the State of Texas collected $1.02 billion in oil and gas production taxes which amounted to 18.9% of their total tax collections. By 1981 they project total gas and oil production taxes will equal $1.4 billion. Finally, Alaska—a much smaller state in terms of population than Montana—projects $433 million from their severance tax on oil in fiscal year 1980. This amounts to 16.1% of their total tax collections. By 1981 they project their total royalties from state lands, severance taxes, and other taxes on oil and oil companies to be $1 billion which will amount to 86% of their total state tax collections.

Thus, revenues from fossil fuel taxation in Louisiana are 10 times the revenues from Montana's coal taxes, the comparable figure is [illegible] times Montana's revenue in the State of Texas and [illegible] times Montana's revenue in the State of Alaska.

Let the facts speak for themselves.

Senator Thomas E. Towe

TAXES COLLECTED ON ELECTRICITY GENERATED FROM MONTANA COAL*

STATE	NATURE OF TAX	%	REVENUE COLLECTED ON GAS AND ELECTRICITY
Illinois	Public Utility Tax Act	5%	$444,526,000 (CY'79) (all utilities)
Indiana**	Sales Tax	4%	$77,326,676 (FY'79) (gas and electricity only)
Iowa	Sales Tax	3% +1% cities	$31,061,162 (FY '79) (gas and electricity only) (no figures from cities - Des Moines has 1% on electricity and 2% on gas.)
Michigan	Sales Tax -Industrial and agricultural use exempted	4% + 5% Detroit "use" tax	$112,636,125 (FY '79) (gas and electricity only) (Detroit collected $14,530,566 FY '79 on electricity and steam)
Minnesota	Sales Tax -some exceptions	4%	$42,000,000 (FY '78) (electricity, gas and heating oil)
Wisconsin	Sales Use Tax -some exemptions -corp. credit.	4%	$72,209,000 (CY '78) (electricity and gas only)
Montana	Coal Tax	2% net effect on customer (3/4 of 1% when averaged with other fuels)	$42,048,828 (FY '79)

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* Only Minnesota Power and Light Co. actually use Montana Coal exclusively so total collections are based in part on other fuels.

** No major Indiana utility uses Montana Coal.

Senator Thomas E. Towe

SEVERANCE TAX COLLECTIONS

	TEXAS OIL & GAS	ALASKA OIL*	LOUISIANA OIL & GAS	MONTANA COAL
FY 1977	$903 million	$476 million	$495 million	$36 million
FY 1978	$955 million	$483 million	$474 million	$34 million
FY 1979	$1021 million	$742 million	$466 million	$42 million
FY 1980 estimates	$1245 million	$2,300 million	$542 million	$75 million**
FY 1981 estimates	$1414 million	$3,000 million	$751 million	$78 million**

* includes royalties paid to the state, tax on oil company income, property tax on the pipeline and bonuses as well as severance tax.

** Estimates are my own. Legislative estimates are out of date.

9 States collect more Severance Tax than Montana

(Bureau of Census - raw data)

Mr. SHARP. I am afraid we are into a vote, so the subcommittee wi stand recessed.

Mr. BROWN. Mr. Chairman, we have just a minute or two. wonder if we could extend the courtesy of the subcommittee to th Congressman from Montana who came to hear the testimony of h colleagues from Montana, and allow him to say just a word abou these two gentlemen? I had meant to ask that he be given th opportunity to introduce them earlier and wasn't in the roon unfortunately, when they took the witness chair. Would that b possible?

Mr. SHARP. Surely. We are going to have to break. We would b delighted to have the gentleman. He did testify at our last hearing The subcommittee is going to stand in recess, but go ahead.

STATEMENT OF HON. RON MARLENEE

Mr. MARLENEE. Well, I welcome the gentleman from Montana Mr. Towe, and I am pleased to see my colleague, Congressma Williams, here, and I would like to point out those I see that ar opposing this legislation are patriotic, conscientious individuals Democrats and Republicans alike, Senators and Representative citizens, who are not inclined to torpedo national purpose, nor ar they people who would act as road agents.

[Testimony resumes on p. 244.]

[Mr. Marlenee's prepared statement follows:]

STATEMENT OF HON. RON MARLENEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

The controversy surrounding Montana's coal severance tax is being promoted by utility companies who point to our tax as being a burden on the consumer. In point of fact, their claims are neither substantiated nor true.

As Members of this Subcommittee, you heard testimony on March 21 on this very subject. Yet nowhere, in any of the testimony presented by supporters of this legislation, did you see the facts to substantiate their claims. Instead, you were presented with simplified generalizations about the amount of money going to Montana.

While the utilities did not present you with the facts, I did, and, regrettably, you chose not to reply to these facts. You may recall that in my testimony I showed just what this tax means to the consumer of Montana coal. I showed for various utilities, among them, Wisconsin Power and Light, Northern States Power, Commonwealth Edison, Central Illinois and Minnesota Power and Light, that the severance tax raises a consumer's bill anywhere from $2.69 to $6.67 per year. You will hear testimony today that shows these figures to be even lower based on the most recent information. Once again, as I did last March, I am asking you if these figures can honestly be construed to be a burden on the consumer? Again, I ask you, have the utilities in support of this bill refuted these figures? The answer is no they have not because they simply cannot.

The facts are clear. The consumer issue is a false issue. By way of comparison, state sales taxes are more of a burden than are severance taxes. An article on severance taxes in the June 1980 issue of the Landmarc Magazine illustrates this point. According to the article, "Actually, most of the states opposing the tax are making a pretty penny off the coal. Illinois, Michigan, and Minnesota, for example, have a sales or utility tax that far exceeds Montana's in terms of net effect on the consumer. Minnesota Power and Light, one of the litigants in a recent joint suit against Montana, must pay a four percent tax on Montana coal to the State of Minnesota. This cost is passed directly on to the consumer. Montana's tax, also passed on to the consumer, amounts only to 2%. When utilities blend fuels, as in Illinois, the consumer pays 5% to his state, but only .5% to Montana."

Clearly the effect on the consumer of Montana's 30% coal severance tax is not what the utilities want you to believe. This fact is further substantiated by the Congressional Research Service which states: "...Montana's severance tax does not impose any more of a burden on other states than severance taxes on oil or gas from the perspective of the end-product that the consumer actually uses." A closer look at this study reveals that because of the prices of the fuels they used in their comparisons, Montana's tax is even less of a burden than other taxes on oil or gas. And, an M.I.T. professor, who specializes in coal issues, in a forthcoming paper, concludes that the effect on the consumer is small. This is the crux of the argument as presented by supporters of this legislation. Where is your proof of a greater burden on consumers? Where are your facts? Why do you persist in ignoring this information?

It might be interesting for the Members to look at what the National Coal Consumer's Alliance has presented, not in testimony before the Subcommittee, but in a highly polished lobby brief presented to certain selected members of the House, of which I was not one. This Alliance presented the approximate severance tax costs of Montana and Wyoming coal to certain Illinois Congressional districts. If we take those figures and break them down into what they mean for the voters of those districts we can determine just what the Alliance is calling a costly burden on coal consumers. For the five utilities the Alliance presented, Central Illinois Light, Central Illinois Public

Service, Commonwealth Edison, Illinois Power and Winnetka Municipal Electric and Water Department, covering 24 districts in Illinois, the cost of severance taxes amounted to approximately $11 million. But, this breaks down to only $4.23 per voter in these five utilities' service regions for the entire year of 1978. Please remember, these figures are the National Coal Consumer's Alliance's figures.

Thus, it should come as no surprise why the lobby groups supporting this legislation have never presented this data in testimony before this Subcommittee. Their own figures do not support their position.

Yet, despite this seemingly clear proof of the fallacy of the utilities' claims, the "burden" theory remains. Instead of answering my challenges to present meaningful figures on the impact of this tax, supporters of the legislation counter with displays of the overall amount of money going to Montana. This warrants further scrutiny. Once again, you will see that Montana is not abusing the resources it has.

Thirty-three states in this nation have severance taxes. If you want to persist in arguing that Montana is reaping huge profits let's look at other states. Let's compare them with Montana. Where do we stand in total receipts received among these 33 states? We stand in tenth place, collecting only about 2.4% of all the severance taxes collected in 1979. The top five states, Texas, Louisiana, Oklahoma, Alaska, and New Mexico, accounted for over 74% of all severance tax receipts in 1979. (see Table I Page?).

In addition to the facts clearly presented in Table I, the Northeast-Midwest Congressional Coalition, of which some of you are members, publishes a paper on the effects of rising state severance tax revenues for the years 1980-1990. Although this study was primarily directed at oil and gas revenues, their conclusions are that the top five states in gross severance tax receipts will maintain their positions and will in fact enhance their position relative to the other states. In an unpublished report done by the Department of Treasury in connection with the windfall profits tax the conclusion of the Northeast-Midwest Congressional Coalition was confirmed.

Are we thwarting the conversion process to coal? If we are indeed preventing this transfer then production in Montana, and Wyoming as well (since their coal tax is greater than 12½%) should not be increasing. This is not the case and as you all know, both of these states are increasing coal production significantly.

The Energy Information Administration publishes monthly cost and quality reports on fuel for electric utility plants. A review of this publication shows that the average delivered price per ton of Montana coal to any single state is much more competitive than coal from other states. For example, the average price of all coal delivered to Ohio was $27.17 in 1978 but the average price of Montana coal delivered to Ohio was $22.78. Similarly, the corresponding figures in Michigan were $29.72 and $19.94 and in Wisconsin, the average delivered price for all coal was $23.90 but for Montana coal to that state the delivered price was $14.47.

Where do the ever increasing costs come from? The answers, unequivocally are transportation and environmental requirements. This, it seems to me, is irrefutable, and again, went unchallenged by the National Coal Consumer's Alliance. Even the Assistant Attorney General in Texas, Mr. David Hughes, agrees to this conclusion. Mr. Hughes, in an address before the Texas Independent Producers and Royalty Owners Association noted that the cost of coal rose only from $6.08 to $7.08 a ton, including severance taxes, from December 1976 to May 1980. In the same period, however, he noted that per ton rail rates escalated to $20.25 from $10.95 to become 75% of the total cost. In my testimony before you last March, I presented evidence which concluded much the same thing, but again, you chose to ignore it. Again, I ask you, where are your facts?

What do the coal consumers and their lobby groups say? In a full page ad in the March 31 Washington Post, Edison Electric said: "All Americans have a big stake in railroad de-reg because it affects their electric bills." Just recently Edison Electric took a vote on whether or not to publicly endorse this severance tax legislation, HR 6625, and their decision was no decision, their board did not vote to endorse and support the legislation. What does the National Coal Association say? They point to transportation and environmental costs. What is their position on this legislation? They have not endorsed it either. The Public Utility Commissioners Association has not endorsed it and the Administration has said that this matter is one that rightfully should be addressed only by the states and without federal intervention. The groups supporting this legislation are the ones who have been losing their fight in the courts on Montana's right to levy this tax. They are applying the pressure here in the House and sadly, some of you are listening without asking them to give you the kind of factual information I have presented you with.

Much has been made of the amount going to the trust fund that Montana set up in conjunction with our severance tax. This trust fund concept is not peculiar to Montana. In fact, several other states, Alaska, Florida, Colorado and Minnesota have their own trust funds and at least one of these will generate at least, if not more, the amount of money Montana's trust fund will. In addition, other states are considering similar taxes and similar uses for their taxes. Harvard professor and international natural resources consultant Beldon Daniels has said that Montana's coal tax is close to the ideal for meeting the needs of its residents while not inhibiting coal development.

The impacts of coal development are great and federal funds do not begin to cover the costs. According to Professor David Hickox of Ohio Wesleyan University, "Government services in the rural, sparsely populated coal development areas are severely strained by rapid population growth. Health services usually are marginal prior to developments and cannot cope with an expanded population. Schools become overcrowded, water and sewage systems taxes beyond their capability, and roads are not adequate to handle increased traffic." These are all problems Montana will have to deal with, not Indiana, not Michigan, not Ohio, nor Texas.

Colstrip, Montana is a case in point. In 1968 Western Energy Company opened the Rosebud Mine there and Montana Power Company set to work constructing two-350,000 kilowatt coal fired plants. There are now 2 more being constructed. In 1976, the town's population grew from 300 to 3000 and it is expected to top off at 7000 in 1981. During this time the lifestyle in Colstrip has changed significantly. Farmland has been lost and where once less than 100 cars a month moved along roads there, now more than 200 a day travel there. The roadways cannot withstand this use today and with expected synfuel development in the future, the present infrastructure there is insufficient to meet projected demands. While the future looks bright for Colstrip, it is not without its problems. We will not allow ourselves to become a sacrificial pawn in this battle. Montana will help this nation become energy self-sufficient but we will protect ourselves. This severance tax is our guarantee for our protection. I will only reiterate what I said to you last March, without the adequate safeguards to meet the costs associated with coal development which this tax provides, there will be less coal development in Montana. You will be guilty of inhibiting this nation's conversion to coal.

The impacts in the West associated with coal development will, again, be great. The capital costs of roads, sewers, firehouses and other structures would be about $275 million in 1985 and more than $400 million in 1990. If the capital costs are amortized over a 20 year period, the total cost to state and local governments, including operating and debt services will be about $425 million in 1985 and $1.2 billion in 1990.

Proponents of this legislation recite federal program after federal program to meet these problems and costs but with rapid coal development in many of the Western states who can state with any degree of certainty that there will be enough money to meet these potential problems. We do not have to wait very long to see that there is not enough money, impact aid for education and payments-in-lieu of taxes are, this year, scheduled for heavy budget cuts. Montana will not gamble on federal appropriations.

John Krutilla, Anthony Fisher and Richard E. Rice, in their book, Economic and Fiscal Impacts of Coal Development, state that "The use of a severance tax as a device to raise revenue from the extraction of coal in order to defray the infrastructure and perhaps also the environmental costs of its development represents a better method of mitigating local impacts from the point of view of national economic efficiency than a grant-in-aid from the federal government or any other source of general taxation."

This conclusion is substantially supported by the Congressional Budget Office in their report on the Hart-Randolph Energy Impact Assistance legislation, S. 1699. The CBO study notes that federal government interest rates subsidies, grants and loan forgiveness is questionable and that it "represents a direct taxpayer subsidy for state and local government services." Instead, the Congressional Budget Office advocates: "The most important federal role appears to be one that would encourage the efforts of state governments and industry. This would provide the least outside interference in development decisions."

If you accept this legislation and reduce allowable severance taxes, the federal government will have to pick up the tab. This will, I maintain, in the long run result in a greater drain on this nation and its taxpayers than if we allowed the present system to operate where user states help meet the costs of donor states.

Table I
Severance Tax Receipts-1979*

Rank	State	Receipts	Percent of total
1.	Texas	$1,025,550	35%
2.	Louisiana	$511,589	17%
3.	Oklahoma	$280,982	9.7%
4.	Alaska	$173,685	6%
5.	New Mexico	$159,431	5.5%
6.	Kentucky	$154,017	5.3%
7.	Florida	$91,902	3.2%
8.	Wyoming	$87,412	3%
9.	Minnesota	$71,263	2.5%
10.	Montana	$53,919	2.4%
11.	California	$48,093	2.3%
12.	Oregon	$47,625	2.3%
13.	Washington	$37,802	
14.	Mississippi	$32,922	
15.	North Dakota	$25,503	
16.	Alabama	$22,281	
17.	Colorado	$19,803	
18.	Michigan	$13,724	
19.	Arkansas	$12,502	
20.	Utah	$8,993	

(The remaining 13 states all collected under $5,000 each and in rank order are: Ohio, Tennessee, Nebraska, Kansas, North Carolina, Virginia, South Dakota, Indiana, Idaho, Wisconsin, New Hampshire, Nevada, and Missouri.)

*Figures are in thousands

Mr. DINGELL. The subcommittee is adjourned. We are going to go over and vote. We will be back in 10 minutes.

[Brief recess.]

Mr. DINGELL. The subcommittee will come to order. When the subcommittee adjourned to go over to vote, we had just completed the testimony of our panel.

We now recognize our colleagues for questions. The Chair recognizes the gentleman from Indiana, Mr. Sharp.

If the gentleman would yield, the Chair thanks the gentleman for presiding in his absence. I had to be absent. I very much appreciate the courtesy to me and the subcommittee.

Mr. SHARP. I thank the Chair.

Regrettably, we are still on the first panel, and we have three other panels of witnesses, so I am reluctant to take much time on questions. I guess I do have a question on the notion of this trust fund.

The Senators indicated their concern and to look ahead and see where they are going to be when coal production stops.

I guess my question is, what kind of future do you see? When do you see this is likely to occur?

Mr. TOWE. When do we consider it likely to occur that we will need to use moneys from the trust fund, or when do we see it likely that the coal will be gone? Those are two separate questions.

Mr. SHARP. I guess I would ask both.

Mr. TOWE. We do have a lot of coal. I presume we may be mining coal for a long time.

Mr. SHARP. A couple of hundred years?

Mr. TOWE. I think it possible we could be mining it for more than that. However, we don't know, really. Right now the Japanese are interested in our coal. We haven't made a decision whether we should ship the coal out of the Nation or save it for our own Nation. If we do, of course, the severance tax issue is a little different issue there, but I would say there is something like 75 billion tons of coal in the State of Montana.

I caution you, that is not the same kind of coal you have in the Midwest, in Illinois and in the Appalachian areas. It is much lower grade coal. Our average coal is around 8,700 Btu's. We have some 9,600. Most of the coal is lignite coal. That is like North Dakota's coal, and because of the high moisture content right now, it isn't feasible to put that on a railroad train and ship it out and burn it elsewhere.

So there is a different kind of situation.

The other question you asked is what about the trust fund. And we need funds to take care of those economic dislocation problems when the coal moves out. We need those funds to take care of problems that we haven't foreseen yet.

We still haven't released a single acre from the reclamation bonds. I am convinced, I am optimistic, I am convinced that we can reclaim that arid land and make it produce like it did before, but it will take a lot longer, and maybe we will run into unforeseen problems; and I think we have to have money in reserve to make sure we can handle those things, unlike Pennsylvania and some of the other States have.

And what happens to our agriculture in eastern Montana, when that coal that acted as a bed for the aquifer that brought the artesian waters from the mountains, and you take that coal out and the water drops down in, what are we going to do with our ground water and our water level?

We don't know how that is going to affect the ranchers and farmers in eastern Montana; and I think we will need some money for that.

And, most important of all, I think we owe something to our children and our grandchildren and their grandchildren who are going to live in Montana, I hope, and who will be proud of that State, not as an impoverished State that once was a wealthy State, but as a State they have an economic, viable vitality and love for; and that trust fund is the only thing that we can look to to guarantee to us we won't be an impoverished State when the coal is gone.

Mr. Williams. Mr. Sharp, if I may, the point of your question is well taken. If it appears Montana is going to be able to set aside several millions of dollars each year for 500 years, then one begins to understand the impact this tax would have. However, Montanans, like everybody else, can do arithmetic, and we understand what exponential growth rate means.

A reasonable assumption is that the coal will be gone in 50 to 75 years. So we are not talking about centuries.

Mr. Towe. Could I add one more thing too, that I probably should have mentioned earlier, and that is, no part of our coal taxes are used for tax relief or for any nonessential government services or anything that isn't genuinely needed.

Mr. Dingell. The Chair observes the time of the gentleman has expired.

The Chair recognizes now the gentleman from Texas, Mr. Gramm.

Mr. Gramm. Senator Towe, you had at the end of your presentation a quite passionate discussion about costs that are being imposed on Montana by this production of coal and costs that are being imposed on local counties, and in looking for some tangible evidence of that, I would like to ask you a couple of questions. Has Montana raised its State taxes in the last 5 years to pay for these additional costs?

Mr. Towe. Has it raised its taxes? We are collecting considerably more income taxes. We do not have a sales tax. We never have had a sales tax. Our property taxes are generally higher, yes.

Mr. Gramm. I am referring to rates. Has the State government raised or lowered its rates in the last 5 years?

Mr. Towe. The State government has not increased its rates or lowered its rates in income taxes since 1971, and the property tax mil levy does tend to creep up in almost all areas of the State.

Mr. Gramm. Well, I have here that the Montana Property and Income Tax Relief Act of 1979 raised your personal exemptions from $650 to $800 and doubled the standard deductions from $500 to $1,000 and raised the maximum nontaxable income level from $720 to $940.

Mr. Towe. That is correct. You asked about rates, and the rates of the tax returns have not been affected. We were able, because of increased income tax collections, to put some of that money back in terms of property tax relief—I mean income tax relief; and we did, in fact, also have a property tax payment of our surplus of about $50 per household.

Mr. GRAMM. On the counties that are directly impacted, the counties that are having their roads used, the counties that see this massive demand for schools and roads, what has happened to their taxes in the last 5 years?

Mr. TOWE. Their tax base——

Mr. GRAMM. I am talking about the rates that are being charged.

Mr. TOWE. Their county taxes are——

Mr. GRAMM. Are down?

Mr. TOWE. The mil levy is down. Their rate base is higher.

Mr. GRAMM. Basically what is happening with economic growth, the same thing that has happened in Texas, is that your collections are way up. Contrary to all the discussion about the need to build these roads, the need to build the schools, the facts are that the State has cut its tax rate, raised its deductions, that the counties that are supposedly being overwhelmed by these costs have, in fact, reduced their taxes.

Mr. TOWE. If I may, Congressman, I would like to point out something that you may be missing. That is, that it is true that we are increasing the personal exemption in the income tax area and we have increased it even more than what you have indicated just recently because of an automatic formula that increases it $50 every time there is so much more money coming into the budget from the surplus.

But that is from our income tax. We have a $40 million increase over projections in the last session of the legislature right now. Much of that is attributed to income tax increases, and there has been a coal tax increase of $4 million, about 10 percent.

So, the things that you are talking about are not a result of our severance tax.

On the local level, the property taxes, let me say something about that. That is correct, the counties have a higher tax base and a lower mil levy, but the impact is on the school districts and on the cities which don't have that increased funding; and that is why we have to have a coal board, in order to shift it from the coal producing jurisdictions into the schools, who need the money to build schools, for the cities and towns which don't have a tax base that is increasing.

Mr. SHARP. Would the gentleman yield?

Mr. GRAMM. I would be happy to.

Mr. SHARP. I think this raises one of our concerns; that is, we hear the cry of these extraordinary costs. We understand the costs. We understand the reclamation problems, the development costs, but we also know that enormous wealth comes with that.

There are new incomes that pay income taxes. There is new value to land that pays automatically without the government having to make the tough political decisions of raising the tax rates. It is not as if it is a one-way proposition and the only way it can be corrected by taxing the coal shipped out of State.

This is the difficulty we have. We don't mean to be insensitive about these claims of costs, but I have a great deal of difficulty accepting the notion that it isn't without some considerable economic benefit to the State at the same time.

Mr. Towe. Mr. Sharp, I appreciate that, and I recognize that in some areas there has been a lessening of the mil levy. I recognize we may be receiving more income, but how often have coal mining companies really paid the full weight? Let's set a precedent and make sure they pay all the costs for a change.

Mr. Gramm. If I can reclaim my time, I think where you are misleading here is that you are acting as if the mining methods used in West Virginia are being used in the West. In fact, the companies that are mining there are under Federal mandate to spend their money to reclaim this land.

You act as if they are going to leave this massive hole out there that you are going to have to come and fill up. That is not true, is it?

Mr. Towe. They have to pay the mining costs in addition to the tax.

Mr. Gramm. And you are receiving half of the royalties?

Mr. Towe. The $550,000 a year; that is correct.

Mr. Gramm. There is one way to increase it; that is, to expand production.

Mr. Towe. Our production was expanded considerably last year. We have 34.4 million tons as of the close of fiscal year 1980.

Mr. Gramm. I would like to conclude, Mr. Chairman, by just noting that I think there is a fallacy here, and I certainly in no way question your motivation, but there is a fallacy here that economic growth in using a resource leaves only blight when it is gone. That fallacy is based on a complete misreading of economic development in States like Texas where we have no trust fund. The whole east Texas field has played out as far as significant production, and what did it leave behind it? It left behind prosperity and economic growth, and tax bases grew as production expanded; industry was drawn in and we broadened our bases.

The second is trying to apply what happened in West Virginia, conjuring that up in the minds of people that that is going to happen in your State when, clearly, Federal law prohibits that from happening.

Mr. Towe. If I may respond to that, first of all, I would hope that we can use some of the income from our constitutional trust to undergo the kind of development that has taken place very nicely in Texas to replace the oil base. That is what I would like to see in Montana, so we won't have those adjustment problems. And I am talking not so much about the problems that were left with the land that was unreclaimed in West Virginia, as the human problems that Senator Wallop talked about, the problems of the people of the State of Montana, and where are they going to go for their livelihood if we don't develop another kind of base, which we can only do with the funds from the coal tax trust.

Mr. Gramm. Mr. Chairman, might I have just one more question?

Mr. Dingell. Without objection, the gentleman is recognized for an additional question.

Mr. Gramm. This new base that developed in Texas when the east Texas field played out wasn't developed by a State trust fund.

You act as if private industry in using the profits and the wages and the salaries is not going to develop a broader base, that unless you extract this tax from the rest of the country in a severance tax and have it there that there is going to be nothing left.

I just don't think the facts bear out that kind of logic, and I have to be concerned as to what the development of America would have been like had New England on its naval stores and its timber followed that logic, had the South followed that logic in the development of their resources, had Texas and Pennsylvania followed that logic with oil.

I am just afraid as each State might have been richer, we would have torpedoed interstate commerce. I think that is a legitimate, serious concern.

Mr. **Williams**. Well, Texas did follow that philosophy. You followed it so well you have no income tax. I pay your income tax when I pump gas. So you have followed that logic. Oil dollars are far different than coal dollars. The oil companies came to Texas and stayed even after the oil had been taken out of an individual hole because there was more oil elsewhere.

But we are mined, in eastern Montana and Wyoming and the Dakotas, by companies who do not have a parent place in the West. Most are absentee companies. The dollars are totally different and the impact is totally different; and when the coal is gone, the companies leave with it, unlike the oil companies who reside in Dallas.

Mr. **Gramm**. Well, I could respond by simply saying in the early development stages in Texas all those oil companies were from New York State and from Pennsylvania.

Mr. **Towe**. I think we are more like West Virginia than we are like Texas.

Mr. **Gramm**. I yield to the gentleman from Indiana.

Mr. **Sharp**. Is it your presumption that your trust fund therefore is going to make investments in industries, in other words, that the State of Montana is going to establish an industry in order to hire the people who would have been in the coal fields?

Mr. **Towe**. We are working on those things right now, and we have listened to people who have given us expert opinion on how Alaska is handling their situation, and what they are going to do when their oil boom is gone, and how Indonesia is taking theirs.

Yes; the answer is that we probably need to set up some development personnel—boards or something—to try to encourage the location of industries that can use Montana, that don't have to depend on high transportation costs, and maybe we can get an industry—maybe we can get economic development going; but we need some seed money, and that seed money can come from our trust fund, and that is what we plan to do.

Mr. **Dingell**. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Washington, Mr. Swift, for 5 minutes.

Mr. **Swift**. Thank you very much, Mr. Chairman.

Legislation sometimes is like telling a lie: "Oh, what a tangled web we weave when first we practice to deceive," because like a lie, sometimes you pass a law and then you have to pass another law to correct that first law, and so on down that line.

And what we are proposing in this legislation is something new. For the first time we begin to move in and tell States you can do this but only up to a certain limit.

Now, it seems to me from previous testimony we know that there are alternative ways of skinning this cat for the State of Montana, for the State of Wyoming, and any other State, probably not as direct, probably not as clear cut, probably not as forthright, but there are other ways.

So that if we were to pass this law, we probably would then have to wait around and see what you, Senator, would come up with and the senators and representatives in the State houses in the other States affected, and then we are going to have to build a curve for that. And then we sit back and wait and see, because one of the things we know as legislators is that we are infinitely ingenious. There are always ways that you can get around us, and that we can get around you.

Have you considered alternative ways that the State of Montana or other States might approach this problem if we were to go ahead and put on this limit on your severance tax?

Mr. Towe. To directly answer your question, the State constitution used to prohibit the taxing of minerals in place, the suggestion that Senator Simpson made. That constitution was changed in 1972 and we can now tax minerals in place under our constitution, and I would suggest very likely that would be proposed if, in fact, this legislation were passed, and I am sure there are other things.

What is the definition of a "severance tax" and how do you define the value? Every State uses a different figure for its base. Wyoming is different from ours and Louisiana is different from the both of them. I imagine there will be ways of trying to work around that, but I hope that isn't necessary. I don't think we need that divisiveness in our country.

Mr. Swift. I think that before we rush in because the percentage figures seem to startle some people, assume that apples and oranges and pears are all apples, pass a piece of legislation supposed to solve that problem, which will only create a plethora of problems all across the board for every imaginable State with every imaginable tax of this sort, that we think seriously whether this is the tangled web, and if we want to start this in the first place.

Mr. Williams. If I may, there is one alternative we haven't mentioned. I said in my testimony that Montanans were sharing people and we always shared our natural resources, usually too inexpensively, in my opinion. I think we are going to continue to share the coal; but there are significant numbers of Montanans who understand that every week coal is worth more, and they really believe that the real windfall is by leaving the coal in the ground.

Three or four legislative sessions ago in Montana there was a proposal that we stop mining our coal, and the proposal was defeated by only one single vote.

So Montanans are perilously close to not wanting the coal to be sent out now.

Mr. Swift. Thank you very much, Mr. Williams. I appreciate that. I think it sheds considerable light on what the responsibilities of Montana would be, and I dare say any other State that would ultimately come under the other rules we obviously would have to pass down the line in order to control them doing whatever it is they want to do with their area.

It seems to me from the figures we have seen, nobody is being hurt by your tax, but if we rush in and begin to do good, if we begin to be busybodies in the States of Montana and Wyoming, we will end up being busybodies from the Federal Government and the other 48 States of the Union and somebody will say someday, "How did we get into this mess?"

The time to not get into it is before you start it, and we have that opportunity.

Mr. SHARP. May I have one question?

How do you respond to the fact that the rest of us in this country also have some economic and property claim as citizens of the United States because of the fact these are Federal lands? I think this is perhaps the issue that rubs hardest when we presume that the production flows into interstate commerce and we begin to question the right of taxation on that which is really, in many of our view, more under our jurisdiction, collectively yours and ours, and not quite under the sovereign State of Montana?

Mr. TOWE. Well, I think that one has to respond to that by pointing out that the amount of revenues that we are collecting is quite small compared to what other States are taking from mineral resources in their States. There are severance taxes on lumber, for example, and those are on Federal lands and it affects us the same way.

There are severance taxes on other things, and as we pointed out, there are eight States that collect more severance taxes than Montana. Texas is the biggest by far, nearly 50 percent, over 40 percent of all the severance taxes are collected by Texas.

With regard to the Federal lands, I think that we have made the decision that we want to make sure that the coal can be used by all the people of this country, but at the same time I think we expect in return that the rest of the country won't leave us an impoverished State; and we certainly will be that way if we can't take care of the out-of-pocket cost of these developments.

Mr. SHARP. How much of the taxes that were collected last year under the severance tax came out of the production on Federal lands?

Mr. TOWE. About one-third.

Mr. SHARP. How much do you think that will grow?

Mr. TOWE. I think it will grow to even a larger percentage, because more of the coal is under Federal land than is not.

Mr. DINGELL. The Chair has the time.

Gentlemen, you mentioned the comments made by Detroit Edison about the bargain that they got when they bought that coal?

Mr. TOWE. That is correct. I just happened to be in Ann Arbor, Mich., when that happened. I did a little study at the University of Michigan Law School, and on July 24, 1975, the report came out in the Ann Arbor news that Mr. Robert Lundgren, purchasing agent for Detroit Edison, was announcing the coal deal with Montana, and I will quote from that. He estimated the savings over eastern coal would be $1 billion for the 200 million tons to be delivered from Decker in the next 24 years. That is after the tax was passed and with full consideration of the tax.

Mr. Dingell. When was the contract signed?

Mr. Towe. 1975.

Mr. Dingell. The contract was signed August 14, 1973. You folks put the tax on in 1975. What was the date you put the tax on?

Mr. Towe. I didn't know it was signed in 1973. I knew it was signed before the coal tax went into effect, but it was announced after the coal tax——

Mr. Dingell. The contract was signed in 1973. Detroit Edison negotiated for the transport of the coal in 1973.

Mr. Towe. Glad to know that.

Mr. Dingell. They submitted themselves to $100 million expenditure for a coal handling facility at the lakehead, and then you folks put the tax on.

Mr. Towe. That contract was entered into before the coal contract?

Mr. Dingell. In fact, that whole sequence of events is correct, am I right?

Mr. Towe. We didn't know that at the time. It was announced afterward.

Mr. Dingell. I am not saying you knew that, but you know it now.

Mr. Williams. The sequence of events is corect, with the exception that Detroit Edison's statement alluding the inexpensive nature of this coal and the savings to their consumers was made with full knowledge of the tax.

Mr. Dingell. What was the total amount that you folks added to the coal bill that Detroit Edison had?

Mr. Towe. If I can recall from memory, it goes like this: The cost of the coal is about $5, and then to that you have to add the cost of shipping it to Superior by rail, which is about $11—I am sorry—$9, and I think it was $2 by barge. So the net cost was $16.10.

Of that, the 30-percent tax amounted to a little less than $1, so that the net price of the coal without the tax was about $4.

Mr. Dingell. For every ton of coal that is burned by Edison, they pay the State of Montana $1?

Mr. Towe. That I think at that time it was; I think it might even be more than that at the present time.

Mr. Dingell. What is it now? It is 30 percent of the cost of the coal; isn't that right?

Mr. Towe. That isn't quite correct. As I indicated earlier, it was 22.5 percent.

Mr. Dingell. It was 22.5 percent, but it is 30 percent now?

Mr. Towe. No.

Mr. Dingell. What is it?

Mr. Towe. The figure is 30 percent in the statute after reduction by all of the Federal, State, and local taxes. So the net effect is 22.5 percent of the invoice price. And that 22.5 percent at the present time is——

Mr. Dingell. Wait a minute. It is either 30 percent or 22.5 percent. I am having a hard time following that.

Mr. Towe. And that is the confusing part; and what I indicated in my opening comments——

Mr. Dingell. After you take out all State and Federal and local taxes?

Mr. Towe. It is 22.5 percent, and to say it is 30 percent is misleading.

Mr. Dingell. What is the cost of coal, $5?

Mr. Towe. The average cost in 1979——

Mr. Dingell. Don't give me the average cost.

Mr. Towe. OK, the delivered price of coal——

Mr. Dingell. Don't tell me the delivered price. What is the cost at the time the tax goes on the coal?

Mr. Towe. The contract sales price, which is the price that the 30 percent goes on, is $9.45 in 1979; and the tax was $2.84 a ton.

Mr. Dingell. $2.84 a ton on a $9 sale?

Mr. Towe. And the f.o.b. price of that coal is $13.36.

Mr. Dingell. f.o.b. where?

Mr. Towe. At the rail site at the mine, f.o.b. mine. The invoice price is $13——

Mr. Dingell. What is the purchase price on the coal?

Mr. Towe. The purchase price—the invoice price—is $13.36.

Mr. Dingell. No, what is the purchase price of the coal?

Mr. Towe. I am not sure I know what you are referring to.

Mr. Dingell. They agreed they were going to pay how much?

Mr. Towe. The contract sales price is $9.45.

Mr. Dingell. $9.45, and they paid $2.84 for that?

Mr. Towe. Tax.

Mr. Dingell. That is the basis on which we figured the tax?

Mr. Towe. Right. But you see, all the contracts are written in terms of, like the one that you referred to, the Detroit Edison, in terms of a base price. And then to the base price you add certain things, like the tax. So that when you get to the invoice price it is $13.34.

Mr. Dingell. Well, what you have told me is on a $9 a ton of tax, $9.45 is a ton, you paid $2 and some cents?

Mr. Towe. Yes.

Mr. Williams. That is for Detroit Edison. For Central of Illinois it is $2.42; for Interstate Power it is $2.65.

Mr. Dingell. What is it?

Mr. Williams. $2.42 for Central of Illinois.

Mr. Dingell. How much do they pay for their coal?

Mr. Williams. $8.08.

Mr. Dingell. $8.08. OK. This is for Illinois. Who else?

Mr. Williams. I have submitted for the record, Mr. Chairman, a list, which I would be glad to develop with you, but a list of utilities and how the severance tax affects each utility per ton. [See p. 217.]

Mr. Dingell. I thank the gentleman.

Mr. Towe. If I can point out, following up on this chart, it also says that the average Michigan customer of Detroit Edison pays $1.23 to the State of Montana each year for that $1.23.

Mr. Dingell. There are 9 million citizens of Michigan, and each pays $1.23?

Mr. Towe. Right. And the tax is——

Mr. Dingell. That is a nice figure. I am not sure those 9 million people are going to like it as much as you folks in Montana are.

Mr. Williams. Mr. Chairman, do you believe that any of your citizens are going to go down and say, "Well, we can't afford that $700 bill this year because of the dollar we paid Montana?

Mr. Dingell. I think they are probably going to tell you they don't like it as well as your folks.

Mr. Towe. But in fact though, the same people pay to the State of Michigan and the City of Detroit about 10 times that much or much more than that.

Mr. Dingell. I get some complaints from them about that, too.

Gentlemen, we thank you very much.

The chair observes that we have a statement from Congressman Ton Tauke of Iowa, which we will place in the record as though read.

[The statement of Congressman Tauke follows:]

STATEMENT OF HON. THOMAS J. TAUKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. Tauke. Mr. Chairman, the development of solutions to our energy problems, particularly our dependence on imported oil, presents us with some of the most serious and critical challenges that we, as a nation, have ever faced. It is imperative that we reduce our consumption of foreign oil and better utilize our own plentiful national energy resources. Because coal is our most abundant fuel resource, we must develop it as one viable alternative to oil in our attempts to become energy independent.

Federal legislation and administration efforts are aimed at developing a national policy of coal utilization. In May 1979, the President said, "Coal, the Nation's most abundant fossil energy resource, should be used in place of oil whenever economically and environmentally feasible. Programs that increase the use of coal as a substitute for oil will receive the highest priority." The President has now followed up this declaration with a proposal to provide incentives to utilities to encourage them to switch from the use of oil to the use of coal in their production of electricity.

My objective here is not to argue the merits of increased coal usage. I feel that case has already been made, and quite convincingly, I might add. Rather, my purpose is to point out that actions by a few States, notably Montana and Wyoming, are detrimental to our national interest and contrary to national energy policy. These two States have attempted to take inordinate advantage of the increases in coal production by imposing excessive severance taxes on the extraction of coal. The taxes—30 percent and 17 percent respectively—far exceed the costs these two States might incur during the extraction process. As it is now, coal producers pay the costs of reclaiming coal-producing land, and the Federal Government helps subsidize States which incur costs during the development of coal from Federal land.

The issue is one of equity. I can understand why legislators in Wyoming and Montana believe it is their responsibility to enact new taxes to help offset the impact of mining on local communities, to protect the natural resources of their States, and to encourage research for alternative energy resources. And I can also understand the desires of these people to have a voice in the development of a Federal policy regarding coal production. However, the taxes levied by Woming and Montana are so substantial that they are detrimental to consumers in other States. Out-of-State consumers must bear the brunt of the cost passthroughs that occur from the time the coal is extracted until the time it reaches them in the form of electricity. Iowans alone, paid over $8 million to Montana and Wyoming in coal severance taxes in 1979.

I cannot argue with the right of and necessity for Montana and Wyoming to implement some kind of severance tax. Generally, severance taxes are levied to compensate a State for the cost associated with production activities. However, when the tax is excessive and results in unjustified increases in consumer utillity costs, then it should be criticized. Montana does not even use a great portion of its tax revenues. In fact, it places about 50 percent of its coal severance taxes into a trust fund for future use. Not all States have enacted excessive severance taxes. For example, Kentucky and West Virginia, two of our largest coal-producing States, have not attempted to profiteer from exorbitant severance taxes on their coal. These States tax coal extraction at the rate of 4.6 percent and 3.5 percent, respectively. In fact, with the exception of Alaska, Wyoming, and Montana, there is not a State in this Union that imposes a severance tax on coal, oil, or natural gas that is over 10 percent.

The resource-rich States of this Nation should share their valuable commodities with the rest of the country and receive a fair price in return. The last thing we need is a damaging conflict between the States involved in the production and usage of coal. It would be most unfortunate, for example, if my state of Iowa put a tax on corn production to offset the high costs its citizens must eventually pay for coal.

As a result, I favor a policy that would limit the size of any State severance tax to 12.5 percent, a figure that is fair to those who are so dependent on utilities for their supplies of electricity. This ceiling will prevent the inequitable and unnecessary exploitation of national resources by a few States.

Mr. DINGELL. Our next panel is composed of Mr. Edward Parsons, Jr.; Ms. Alice Howard, Mr. Mark Borer, Lynn Vorbrich, and Mr. Irwin Stelzer.

Please come forward and take your places.

The Chair observes we have read your statements. Without objection, the entirety of your statements will be inserted in the record at an appropriate place and we will recognize each of you.

Ladies and gentlemen, if you would each identify yourselves for the purpose of the record, starting on your left, it would be much appreciated.

Mr. VORBRICH. My name is Lynn Vorbrich. I am general counsel and corporate secretary of Iowa Power & Light Co., Des Moines, Iowa.

Mr. DINGELL. We thank you for being with us.

Ms. STREITER. I am Sally Streiter from NERA. I am with Dr. Stelzer and supporting his testimony.

Mr. DINGELL. And you, sir?

Mr. BORER. I am Mark Borer from the Nebraska Public Power District.

Mr. STELZER. I am Irwin Stelzer, National Economic Research Associates.

Mr. PARSONS. I am Edward M. Parsons, Jr., Commissioner of the Public Service Commission of Wisconsin.

Mr. DINGELL. Commissioner, we thank you for being with us.

Ms. HOWARD. I am Alice Howard. I represent Cajun Electric Power Cooperatives, the generating utility in Louisiana, and the Louisiana Association of Rural Electric Co-ops, but today I am also representing NRECA, our National Association of Rural Electric Cooperatives, and also Western Fuels.

Mr. DINGELL. Ms. Howard, we thank you for being with us.

Mr. MAUSE. I am Philip Mause. I am here with the Commissioner.

Mr. DINGELL. Thank you, sir.

Mr. BEATY. I am Orren Beaty. I am with Alice.

Mr. DINGELL. Mr. Beaty, we are happy to have you back before the subcommittee again.

We will start now with Mr. Vorbrich.

STATEMENTS OF LYNN K. VORBRICH, GENERAL COUNSEL AND SECRETARY, IOWA POWER & LIGHT CO.; MARK A. BORER, FOSSIL FUEL SPECIALIST, NEBRASKA PUBLIC POWER DISTRICT; IRWIN M. STELZER, PRESIDENT, NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.; EDWARD M. PARSONS, JR., SENIOR COMMISSIONER, PUBLIC SERVICE COMMISSION OF WISCONSIN, ACCOMPANIED BY PHILIP J. MAUSE, WASHINGTON COUNSEL; ALICE HOWARD, DIRECTOR OF PUBLIC AFFAIRS, CAJUN ELECTRIC POWER COOPERATIVES; ORREN BEATY, CAJUN ELECTRIC POWER COOPERATIVES; AND SALLY HUNT STREITER, VICE PRESIDENT, NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.

Mr. VORBRICH. Thank you, Mr. Chairman.

I have submitted a statement, and due to the late hour, I think it probably best for everyone if I do not read that into the record.

Mr. DINGELL. I think because of the hour, without objection, your prepared statements will be inserted in the record, and we will recognize you for such summary or comments as you desire to give.

We thank you.

Mr. VORBRICH. My comment would be that we have lots of news of captives lately. I would say that I appear here today as a captive in the utility industry.

We are captives of the Clean Air Act, that will not let us use the coal we have in Iowa. We are captives of a national policy of indecision on nuclear plant construction that will not allow us to build new nuclear plants. We are captives of the Burlington Northern Railroad and the ICC, which haul our coal from Wyoming, which is the only economical source of usable coal for us.

We have had lots of comparisons. One was just made of your citizens in Michigan and what they pay in sales taxes. Sales taxes and the taxes we pay in Iowa, for the most part, are voted by our citizens or they are levied by our representatives. This severance tax is a tax we have no control over.

We understand the need for Wyoming and Montana to have this tax to support the needs that are imposed on their economy. We think the 12.5 limit is a reasonable one. It may be that some other number is better.

I know that the argument that it is a small amount—"peanuts" was used here today. That is what your utility bill is made up of, is a whole lot of small amounts, many of which are absolutely out of our control.

It is true, perhaps, that utility bills will not go down if this bill is passed, but it will have an effect. It is part of the cost of coal, and at many of our utilities, it passes directly through to the customers, and if it is a cost we can reduce, it will pass through on utility bills and it will be felt by the customers.

We hope you will support the bill.

[Mr. Vorbrich's prepared statement follows:]

Statement of
Lynn K. Vorbrich
General Counsel and Secretary
Iowa Power And Light Company
Before the
Energy and Power Subcommittee
of the
House and Interstate and Foreign Commerce Committee
June 5, 1980

Mr. Chairman and members of the Subcommittee, thank you for giving me the opportunity to appear before you on this very importa subject.

I am Lynn Vorbrich, General Counsel and Secretary of Iowa Power and Light Company with corporate headquarters in Des Moines, Iowa. Our company provides electric power to over 227,000 customer in Central and Southwest Iowa.

We are committed to providing our customers with the lowest cost electric power possible. To this end, Iowa Power has sought a realistic mix of nuclear and coal fired generation, with gas and c for peak load generation.

Because nuclear power faces an uncertain future, new addition to our base load capacity will be coal fixed units. Just over a ye and a half ago we completed construction of a 650,000 kilowatt unit near Council Bluffs in Southwestern Iowa. We operate this unit, and share ownership with other investor-owned companies along with some municipally-owned and rural electric coops. We will also be part owners of the following facilities: a new 675,000 kilowatt unit nea Ottumwa, Iowa, expected to be completed late this year; a 650,000 kilowatt unit in Louisa County, Iowa, scheduled for completion in 1984; and a 650,000 kilowatt unit in Central Iowa, scheduled for completion in 1985. Each of these generating stations will use coal from Wyoming. You can see that our company and all other investor-owned utilities in Iowa will become larger users of Wyoming coal in the next five years.

Virtually all of the coal now burned by utility companies operating in Iowa is supplied by Wyoming. Only a small percentage is mined locally or comes from Montana.

We have prepared some figures showing the increased use of Wyoming and Montana coal in Iowa over the next five years. Please keep in mind that these figures show the tonnage used by virtually all of the electric utility companies in the state, not just Iowa Power.

Our figures show that in 1980, utilities in our state will use approximately 7.2 million tons of Wyoming coal at a total cost of over $74 million. By 1984, usage will increase to over 11 million tons at a cost of over $177 million. The severance taxes, based on current rates will be just over $10 million in 1980, but will jump to over $23 million by 1984. This is a 130 percent increase in the dollar amount of severance taxes paid to Wyoming and, to a much lesser extent, Montana, while the actual tonnage will have only increased 54 percent. According to my calculations the tax per ton will be $1.39 per ton in 1980, and will reach $2.13 per ton in 1984. During the five year period between 1980 and 1984, Iowa utilities will burn close to 46 million tons of Wyoming and Montana coal at a total cost, figuring inflation, of almost $613 million. We will pay approximately $82 million in severance taxes over that period, at the current rates.

We do not begrudge Wyoming and Montana their right to collect monies to cover the costs that they and their local governments incur because of coal mining activities. We do, however, believe that the 17 percent and 30 percent figures currently being imposed are excessi It should be noted that our coal costs already include a figure to pa for land reclamation that is not a part of the severance tax. Also, is our understanding that when coal is mined on Federal land, the states receive a federal subsidy to help cover the costs caused by an increased burden on governmental services.

With a National emphasis on the increased use of coal, we feel that excessive severance taxes run counter to National policy. Those states that are blessed with low sulphur, clean coal have found a way to receive a "windfall profit" for their state treasuries at the expense of citizens in other parts of the country. We are more than willing to pay our fair share, but we do not feel that 17 and 30 percent severance taxes are at all fair.

As I said at the beginning of this statement, we at Iowa Power are committed to providing our customers with the lowest cost electricity possible. Every time a new tax is enacted, or a new regulation approved that increases operating expenses, it costs our customers through increased electric bills. These "small" increases add up fast. We feel that we must protest expenses that are excessive and unfair to us and to our customers. For this reason, we support H.R. 6625 and H.R. 6654, and encourage the subcommittee to act favorably upon this concept.

Thank you.

Mr. DINGELL. Thank you, Mr. Vorbrich.

We thank you for your very helpful testimony.

The next witness is Mr. Borer.

STATEMENT OF MARK BORER

Mr. BORER. Thank you, Mr. Chairman.

Our statement has been entered into the hearing record [see p. 256], and with your permission, I would just like to provide a brief oral summary of NPPD's testimony.

Mr. DINGELL. That would be entirely appropriate.

Mr. BORER. I am here today also to present testimony on behalf of the American Public Power Association. The purpose of my statement is to inform this subcommittee of the effect that unrestrained severance taxation has upon NPPD and its customers.

We, as part of our power supply program to serve present and future projected loads, have under construction and will own and operate two western coal-fired generating units, each nominally rated at 600 megawatts, at our Gentleman Station in western Nebraska.

In addition to Gentleman Station, we are also currently implementing plans to construct yet another 600 megawatt western coal-fired generating unit at a site near Comstock, Nebr., for commercial operation in the late 1980's.

The selection, design, and location of these units is, in large part, based upon the availability of low-sulfur western coal to fire these plants. As such, western coal for these coal-fired generating stations will be furnished under long-term contracts which obligate NPPD to buy coal from specific mines and suppliers for periods which can exceed 20 years.

For Gentleman Station alone, we are contractually bound to purchase approximately 3.6 million tons of coal per year from Wyoming sources. We will also be bound to purchase approximately 1.8 million tons of coal for our scheduled Comstock plant when it comes on line in the late 1980's.

NPPD supports severance tax levels which are adequate to compensate states for the cost of service provided in production of coal. NPPD feels the State of Wyoming, with an effective tax rate of 17 percent, and Montana, with an effective tax rate of 30 percent, are collecting far more in taxes than are necessary to cover the cost of providing this infrastructure and public services necessary for coal production.

Other coal-producing States in the West have been able to cover these real costs while keeping tax rates below 12.5 percent.

At this time, if I may, I would like to provide a brief example of the economic effects that this increased severance taxation has upon NPPD and its customers. As you may know, the State of Wyoming earlier this year had a bill proposed in the State legislature which would increase the 17-percent severance tax an additional 4 percent. NPPD is bound to Wyoming by a 20-year coal supply contract for its Gentleman Station. As such, the price of this coal is adjusted to include State severance taxes.

As of April 1, 1980, NPPD was paying $6.52 per ton for Wyoming coal, plus a severance tax of $1.05 per ton. Wyoming's proposed 4-percent increase in severance taxes would raise the cost to NPPD from $1.05 a ton to $1.30 a ton. Should Wyoming continue to move toward Montana levels of taxation, NPPD's severance tax cost and present terms would rise from $1.05 a ton to $1.85 a ton.

The limits proposed within the legislation before us today would lower NPPD's prospective vulnerability to Montana level taxation from $1.85 a ton to 82 cents a ton.

As you well know, as a public utility, NPPD passes savings as well as costs through to our customers. In current dollars, at Wyoming's present 17-percent tax level, NPPD's customers would realize a savings of 24 cents a ton due to this legislation.

Of far more importance, however, is the fact that Nebraskan consumers, like consumers elsewhere, will also be protected from inflating severance tax increases, which could equal or exceed Montana's levels.

The difference between the proposed limit of 12.5 percent and Montana's 30-percent level at current prices is $1.03 per ton. Once NPPD has its three newest planned coal-fired units in full operation, these plants alone will be consuming an estimated 5.5 million tons of coal a year. At current price levels, the difference between Montana's 30-percent tax adopted by other States and the proposed limit of 12.5 percent imputes to a potential savings of approximately $5.6 million a year for NPPD and its customers alone.

The potential $5.6 million in severance fees represents a very small part of the excess taxes that will be paid by citizens of energy-poor States if tax levels remain unstrained. Every business, be it public or private, large or small, needs some degree of economic certainty to operate efficiently. Utilities like NPPD, which must enter into long-term coal contracts, especially need assurance that their plans will not be thrown awry at the discretion of State legislatures that choose to exacerbate the Nation's energy problems.

At a time when we are seeking as a nation to decrease our dependence on foreign oil, we must avoid exchanging our national vulnerability to energy-rich nations for a vulnerability based on the taxing authority of energy-rich States.

NPPD believes that in the future, if Montana sets the standards for other coal-producing States, we will be left with a national policy that condones taxation by one State on the citizens of another, and that impedes the attainment of our national energy goals.

In conclusion, I would just like to say that NPPD and APPA strongly urge that this subcommittee give favorable consideration to the legislation before us today.

Thank you for your time.

[Testimony resumes on p. 271.]

[Mr. Borer's prepared statement follows:]

BEFORE THE INTERSTATE AND FOREIGN COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT OF NEBRASKA PUBLIC POWER DISTRICT
ON H.R. 6625 AND H.R. 6654

My name is Mark A. Borer and I am a Fossil Fuel Specialist for Nebraska Public Power District (NPPD). I was graduated from the University of Nebraska in 1976 with a degree of B.S. in Business Administration. I also graduated from Colorado School of Mines in 1978 with a degree of M.S. in Mineral Economics. As Fossil Fuel Specialist, I assist in the management of and am responsible for the overall coordination of NPPD's fossil fuels activities.

I have previously testified in a federal court case concerning utility matters.

The purpose of my statement in this proceeding is to inform the Subcommittee of the effect that unrestrained severance taxation by other states will have on NPPD and on its Nebraska customers. These effects illustrate why unrestrained severance taxation impedes the conversions to coal on which our national energy policy depends while taxing consumers of one state for the benefit of citizens of another. To avoid these effects, NPPD supports the two bills before you as the most equitable means of achieving our national energy goals.

NPPD is a public corporation and political subdivision of the State of Nebraska. Its general offices are in Columbus, Nebraska.

NPPD operates an integrated electric utility system, including facilities for generation, transmission and distribution of electric power and energy at retail and wholesale.

NPPD presently serves approximately 106,000 customers at retail, including retail service in 242 municipalities and communities, and supplies at wholesale the total requirements of 81 municipalities, public power districts and cooperatives. In addition, NPPD provides at wholesale part of the requirements of the city of Lincoln, Nebraska, and also has interconnection agreements with 19 self-generating municipalities pursuant to which such municipalities may purchase part of their requirements from NPPD.

NPPD, as part of its power supply resource program to serve present and future projected loads, has under construction and will own and operate two Western coal-fired generating units each nominally rated at 600 megawatts net at its Gerald Gentleman Station near the town of Sutherland in west central Nebraska. Gentleman Station Unit No. 1 began commercial operation in April, 1979 and Unit No. 2 is under construction and is scheduled for commercial operation in 1981. In addition, NPPD is currently implementing plans to construct another 600 megawatt net fossil fuel plant for commercial operation in 1987. The selection of and commitment to these sites and the design of units were based, in large part, on the availability and use of Western coal. NPPD agrees with the national energy policy to use the abundant coal resources in this country and has sought to take advantage of low-sulfur Western coal as the primary fuel to fire these plants. During each year of the 35-year estimated life of Gentleman Station the coal usage will be approximately 1.8 million tons per year per unit or 3.6 million tons per year total for the station. The station planned to be built near Comstock, Nebraska will also burn approximately 1.8 million tons annually.

Western coal for these generating plants will be furnished under the provisions of long-term contracts which obligate NPPD to buy coal from specific suppliers and from specific mines for periods which can exceed 20 years. The coal for Gentleman Station is "compliance coal" which has been purchased to meet EPA regulations.

NPPD's prime sources of coal are in the state of Wyoming. For the Gentleman Station units alone, we are contractually bound to purchase approximately 3.6 million tons per year from Wyoming sources. Nebraska is geographically located so as to almost require procurement of our low-sulfur coal from the states of Montana, Wyoming, Utah or Colorado. We will be similarly bound to these states for our planned Comstock plant.

NPPD supports severance tax levels which are adequate to compensate states for costs and services provided or necessary in connection with coal production. The state of Wyoming, a prime producer of coal for NPPD, taxes coal at an effective rate of approximately 17%. Wyoming's rate of 17% and Montana's rate of 30% are far in excess of the rates charged by other coal-producing states. These two states are collecting far more in taxes than they require to cover the cost of providing the infrastructure and public services for coal production.

Other states have been able to cover their costs while keeping their taxes at an effective rate of 12.5% or less. The state of Idaho actually lowered its coal serverance tax in 1972 from 3% to 2%. Most coal-producing states, with the exceptions of Wyoming and Montana, have responsibly established severance tax levels that simply reimburse each state for the services that they must provide in connection with coal production. The coal boom is causing unprecedented leaps in jobs and income in these states and coal producing states therefore have a strong interest in encouraging coal production. This benefit to the Western states is consistent with the national interest since the most effective response to our national energy problems is to maximize the utilization of coal.

However, if coal-producing states begin imposing severance taxes that far exceed their costs, demand for coal will fall as the price for coal rises. This is well illustrated by the fact that from 1970 until 1975, roughly equal amourts of coal were mined in Wyoming and Montana. However, when Montana's 30% severance tax went into effect, coal production in that state began to level off while Wyoming's coal production continued to soar. Businesses and utilities like NPPD simply will not pay higher prices for Montana coal if coal from other states is less costly due to more reasonable severance taxes. This is one reason why NPPD does not purchase coal from the state of Montana.

Unfortunately, there is nothing to prevent other states from hiking their severance taxes to Montana levels. In fact, as Montana continues to collect so much in severance taxes that it must allocate state surpluses to a trust fund, other state governments will be increasingly tempted to do the same. As of January, 1980, the states of Colorado and New Mexico were considering increasing coal surcharges. In Wyoming, the state which is presently NPPD's primary source of coal, a bill proposed earlier this year before the state legislature would have increased Wyoming's 17% severance tax by an additional 4%.

NPPD is bound to Wyoming by a 20-year coal supply contract for its Gentleman Station. The price of NPPD's coal is adjusted to include state severance taxes. As of April 1, 1980, NPPD was paying $6.52 per ton for Wyoming coal plus a severance tax of $1.05. Wyoming's proposed increase in severance taxes would raise the cost to NPPD from $1.05 per ton to $1.30 per ton. Should Wyoming continue to move toward Montana levels of taxation, NPPD's severance tax costs, in present terms, would rise from $1.05 per ton to $1.85 per ton. The limits proposed by H.R. 6625 and H.R. 6654 would lower NPPD's prospective vulnerability to Montana-level taxation from $1.85 per ton to $.82 per ton.

As a public utility, NPPD passes savings as well as costs through to its consumers. In current dollars, at Wyoming's present 17% tax level, NPPD customers will save $.24 per ton due to this legislation. Of far more importance, however, is the fact that Nebraska consumers, like consumers elsewhere, will also be protected from inflating increases which could equal or exceed Montana levels. The difference between the proposed limit and Montana's 30% level, at current prices, is $1.03 per ton.

NPPD and its Nebraska customers have a substantial economic interest in being protected from excessive severance taxation. Once NPPD has its three newest and planned coal-fired units in full operation, these plants alone will be consuming an estimated 5.4 million tons of coal per year. At current price levels the difference between Montana's 30% tax, if adopted by other states, and the proposed limit of 12.5% imputes to a potential savings of approximately $5.6 million per year for NPPD and its customers alone.

NPPD is not the only utility which must rely on coal. NPPD's potential $5.6 million in severance fees represents a very small part of the excess taxes that will be paid by citizens of energy-poor states if tax levels remain unrestrained. These millions of dollars in the form of costs passed through to the consumer, is in every sense a taxation by one state on the citizens of another. In this regard, the American Public Power Association (APPA), a national association of publicly owned electric utilities of which NPPD is a member, adopted a resolution at its annual conference in May, 1980 supporting the subject House bills. The resolution as adopted by the APPA has been attached as an Exhibit to this statement.

Every business, be it public or private, large or small, needs some degree of economic certainty to operate efficiently. Utilities like NPPD, which must enter long-term coal contracts, especially need assurance that their plans will not be thrown awry at the discretion of state legislatures that choose to exacerbate the nation's energy problems. Individual coal consumers with short-term commitments may be able to curtail operations or switch suppliers when energy costs suddenly increase. However, once large public utilities like NPPD build plants and bind themselves to long-term coal contracts, they become captives to the coal-producing states and their consumers bear the brunt of ever increasing tax costs.

We are seeking, as a nation, to decrease our dependence on the foreign oil. We are seeking to decrease our dependence on the petroleum-rich OPEC countries. Unfortunately, we must avoid exchanging our national vulnerability to energy-rich nations for a vulnerability based on the taxing authority of energy-rich states. Coal users will not only be enriching residents of Western states by purchasing millions of tons of coal, coal consumers may also be assuming the tax burdens of citizens of those states. Already, in Montana, some political groups are demanding that the state surpluses that are accruing from excess severance costs be used to effect tax reductions for Montana citizens. These groups have also acknowledged the inequitable nature of excessive severance taxation. As Montana gubernatorial candidate Jack Ramirez stated during his 1978 campaign:

> "(V)iewed objectively, the 30% tax is too high to be considered fair. It is inflationary and may be unconstitutionally excessive. If other states imposed similar taxes on their resources or goods, we'd scream 'foul.'" Billings Gazette, May 21, 1978.

NPPD believes that this correctly assesses the situation. In the future, if Montana sets the standard for other coal-producing states, we will be left with a national policy that condones taxation by one state on the citizens of another and that impedes the attainment of our national energy goals.

CONCLUSION

NPPD respectfully requests that the Subcommittee approve both H.R. 6625 and H.R. 6654 in their present form.

Mark A. Borer

MARK A. BORER

Dated: May 30, 1980

EXHIBIT

COAL SEVERANCE TAXES

WHEREAS, the nation has grown dangerously dependent on imported oil and in recognition of that dependence the Congress has passed several laws relating to the conversion of electric utilities from oil and gas to coal, and

WHEREAS, the increase in coal production required by such conversion efforts will result in costs to coal-producing States which should be recompensed, and

WHEREAS, some coal-producing States have taken advantage of the growing national need for coal through the imposition of unreasonable coal severance taxes, thus imposing inequitable burdens on electric consumers, and

WHEREAS, H.R. 6625 and H.R. 6654 impose a maximum limit of 12-1/2% on severance taxes on coal, which will produce sufficient revenues to meet coal-producing States' costs and is consistent with previously enunciated APPA policy;

NOW, THEREFORE, BE IT RESOLVED: that the American Public Power Association reaffirms its previously announced position in opposition to extreme State severance taxes and supports the enactment of H.R. 6625 and H.R. 6654.

-Adopted by the American Public Power Association at the 1980 Annual Membership Meeting.

Mr. DINGELL. Thank you very much, sir.

Our next witness is Dr. Stelzer.

STATEMENT OF IRWIN M. STELZER

Mr. STELZER. Thank you, Mr. Chairman. I will be brief.

We have to keep in mind a few very simple points. I have been trying to listen this afternoon through this sort of welter of numbers and arguments, and a couple of things emerge that it seems to me to be important to keep in mind.

First of all: The Montana severance tax, and in part the Wyoming severance tax, really has nothing to do with reimbursement to the State's citizens for environmental and social costs associated with the production of coal. There are existing restrictions on the mining of coal in those States, and there are other taxes which more than compensate the State for the environmental and social impact costs associated with coal production.

We have done a study which shows that if we assume that the real price of coal remains constant over the next several years, by 1990 the taxes levied by Montana on coal will reach a level of about 30 times the best estimate we can get of the maximum annual impact of coal production on that state.

So, we are not talking about reimbursing one state for its contribution to the social well-being; we are talking about something many, many times that. It seems to me that if anything emerged today, it was a sort of agreement, either explicitly or by implication, that the States ought to be compensated for the social impact and for the environmenal impact on them of coal production, but not for some multiple of those costs. We have done a careful study of these costs and these taxes are exorbitant by any test of cost.

Second: I think it is not a question of whether a State can impose a tax on one of its products. It is a question of whether a State or two with enormous market power over a resource—they have 68 percent of the low sulfur coal reserves in this country—can impose a tax.

It is not a question of whether the State of Michigan decides to tax automobile production—everybody looks for Michigan examples when you are in the chair, on the theory that that focuses your mind somehow. The State of Michigan cannot put a 30-percent tax on automobiles because the Japanese, and the Germans, and everybody else would know what to do about it. You are selling automobiles in a competitive market.

But when you have two States sitting on 68 percent of the low sulfur coal reserves in the United States, there is almost no economic limit on the taxes they can impose, and since the taxes are borne out of the State, there is no political limit either, so that you have a situation which is a special kind of situation, which is not a question of whether a State is willing to bear the burden of any adverse effect of its taxes, but whether it is willing to apply its monopoly power, and in concert apply its monopoly power to tax away some $350 million a year from consumers in other States.

Now, I recognize that everybody says that is not a lot of money, although I am reminded here that $350 million here, $350 million there, and before you know it, you are talking about real money. It seems to me that if you take a big enough denominator, you can make any number small, and the fact that it is only $1 a month here or $2 a month there simply means that if you can extract money from a large enough number of people, you can make the per capita cost of your rapacity seem really rather low.

I think another thing we have to remember about this specific legislation is that it is being proposed in an environment in which you have spent now 5 years working on national energy policy questions, in which you have wrestled with the balancing of environmental and energy needs in the country, and come up with something that may begin to work. But what you have done at the same time, when added to what OPEC is doing, added to where God happened to put the low sulfur coal reserves in this country, is, you have passed a batch of legislation which mandates the use of low sulfur coal so that you have Mr. Brown of Ohio saying: "We have a lot of coal in Ohio, and we cannot use it."

You have conferred monopoly rents on two States in this Nation, and the question is, are you going to let them grab them, or are you going to reserve them to the broader body politic?

You have created the power of holders of low-sulfur coal and the question now is, are you going to do something about it? The ceilings set in this legislation allow the States to levy taxes many multiples in excess of all the environmental and social costs that will be imposed on them by the production of this coal.

Now, I would like to add just a few points which I think you should keep in mind. No. 1, if we get into this business of States taking scarce resources and extracting monopoly rents on them from other States, you are going to have a rather upward cost in goods that move in interstate commerce and a downward spiral in productivity, the kind of thing that the European Common Market is trying to overcome. It has taken a generation in Europe for them to get even close to what we have achieved in this country when we wrote the Constitution, and to go back and Balkanize this country by allowing States to interfere with interstate commerce—forgetting about whether it is legal or not—seems to me to impose enormous economic costs on society, which the framers of the Constitution seem at least intelligent enough to avoid.

Finally, I think that we ought to keep in mind the question of who pays the tax, is of some considerable importance to political people—economists prefer not to address those questions of income distribution. We have put in an exhibit here which tries to show you how much money goes from each State to Montana and Wyoming under these severance taxes, and it is quite a lot of money. And in the end, if you are dealing with Federal lands, to the extent that the severance taxes go up, the leasehold value of those lands goes down, and it will be reflected in lower royalty payments to the Federal Government for these lands when they are leased.

So, what you have is a mad dash to get at these rents.

The railroads have managed to get their snouts in the trough a little earlier than most, and the question is, are the States going to get there before the Federal Government, which, when it leases these properties, gets the full economic value of them?

I had put in my testimony as a conclusion that this is a difficult problem. The people who are nervous about political things around here said to me that I should not say that, because they do not think it is a difficult problem, but I think it is a very difficult problem.

It is a difficult problem in Federal and State relations, it is a difficult problem in equity, and it is a difficult problem in economics. But I think it is a solvable problem, that there is a principle to which you can repair, and the principle to which you can repair is that the States should be reimbursed for the environmental and social costs of mining coal. To that they have an entitlement.

The taxes that they have imposed and the regulations they have imposed already do that. A severance tax goes well above that. A good argument can be made for a zero severance tax, I am brave enough to say when Mr. Gramm leaves the room. Twelve percent is generosity beyond description. If that is necessary to avoid 30 percent, then that is fine. I got it out before he got back. I just said that 12 percent is high, Mr. Gramm, but I would go with it if it enables you to oppose 30. But zero is really the number the economists would come up with, given the level of unrecovered environmental and social costs.

Thank you very much.

[Testimony resumes on p. 300.]

[Mr. Stelzer's prepared statement and attachments follow:]

PREPARED STATEMENT OF
IRWIN M. STELZER
PRESIDENT
NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.

It is a great pleasure to have the opportunity to be here today to present my views to this Committee; I much appreciate your invitation to appear. I should like to point out at the outset that this testimony, and that of Sally Streiter, is based on a great deal of research done for counsel to several electric utilities, although not all of those utilities necessarily agree with everything we have to say.

Previous experience has taught me that it is best to begin by summarizing our major findings. These are:

1. The Montana severance tax has nothing to do with reimbursement to that state's citizens for environmental and social costs associated with coal production. Existing restrictions and other taxes already imposed more than adequately handle that problem (Exhibit 1).

2. Montana and Wyoming have important market power: they control 68 percent of the nation's low sulfur coal reserves, and sell in markets in which prices are affected by the OPEC cartel and our own national policy to encourage use of low sulfur coal.

3. At present tax levels--and there is every reason to believe that these levels will be sharply increased in the absence of federal legislation--Montana and Wyoming severance

taxes will transfer hundreds of millions of dollars annually ($360 million by the mid-1980s) from the 81 million citizens of 23 states to the 1.4 million citizens of Montana and Wyoming (Exhibit 2).

4. The severance tax ceilings set in the proposed legislation would leave Montana and Wyoming with revenues many multiples in excess of all environmental and social costs incurred in coal production.

The real issue before this Committee is who will get the windfalls and monopoly profits that result from a convergence of the following forces:

1. A rapacious oil cartel, OPEC, has been able to maintain crude oil prices at previously undreamed of levels.

2. Forty percent of our nation's coal reserves are located in two states--27 percent in Montana, and 13 percent in Wyoming.

3. Environmental legislation passed by the Congress regulating coal use has put a high premium on low sulfur coal, of which 68 percent of the nation's reserves are located in Montana and Wyoming.

4. The virtual demise of our nuclear program, the clear desirability of reducing oil imports and the virtual exhaustion of incremental hydro sites all combine to increase the market power of states having large coal reserves.

These forces create a climate in which necessitous buyers converge upon strategically situated sellers, and pay prices that include windfalls and monopoly profits. If prices are kept below these levels, consumers get the benefits; if delivered prices are permitted to rise, a scramble results, with miners, railroads, coal companies, state governments and the federal government all dashing to the trough, to get there first to get the most.

This Committee has to decide whether it will restrain the various claimants. Our studies show that in the absence of a ceiling on severance taxes, Montana acting alone can increase its aggregate revenues by raising the severance tax to 100 percent, something it feels it has the legal right to do.[1] If it acts in concert with Wyoming--a conspiracy already active, if not yet effectuated--the only effective limit on the tax rate would be consumers' inability to pay for electricity.

Other issues raised by the proposed legislation are as old as the nation itself--the question of whether one state has the right to tax another, or more fundamentally, whether national interests should be subordinated to state or regional ones. While these questions may be posed separately, the answers to them are closely linked.

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[1] Commonwealth Edison Company, et al. vs. State of Montana, et al., Oral Argument in the District Court of the First Judicial District of the State of Montana, March 8, 1979, p. 84 (Statement of Mike McGrath, Assistant Attorney General, State of Montana).

Federal concern with the severance tax issue involves fundamental constitutional principles as well as economic and social issues. Taxation is rarely a neutral economic or political instrument, and an export tariff (which the severance tax may be considered in this case) or any other excise tax, can be a double-edged sword. When European countries in the Twenties and Thirties imposed import tariffs to protect domestic industry, they found that neighboring nations imposed retaliatory tariffs. The net effect was to cut everybody's exports, to cut everybody's imports and ultimately to cut everybody's GNP. The "beggar-thy-neighbor" approach resulted in beggaring the entire neighborhood. It was this bitter experience that led nations of Western Europe to create a Common Market in which barriers to trade would gradually be reduced--gradually because it can be painful and uncertain to remove crutches to which one has grown accustomed, even though walking is ultimately so much more efficient than hobbling on crutches.

The imposition of state severance taxes that fall predominantly on those outside the state represents what our constitutional framers called "taxation without representation"; the economic implications of that kind of taxation are potentially as deleterious to the national economy as they are to basic constitutional principles. If Montana can establish a policy that raises the cost of electricity in Michigan, for instance, by raising the price of coal by 30 percent, then what is to prevent Michigan from imposing taxes on station wagons going to Montana? The Interstate Commerce Clause was an explicit recognition by the authors of the Constitution that, ultimately, barriers to trade between the states have a disastrous economic impact on the nation as a whole, and should be eliminated.[2]

We all know, of course, that Michigan won't and can't levy a 30 percent tax on automobiles going to Montana. Why? Because the forces of a competitive marketplace would prevent such an action, even if the law permitted it. Export taxes raise the price of a commodity and competitive suppliers--in this case Japan, Germany and others--would cut still further into Detroit's markets. The forces of the marketplace help reduce the burden on the Constitution, the Supreme Court and Congress by reducing the likelihood that states will be able to impose export tariffs on other states. Export taxes have an effect on the price of a commodity; they generally raise it. To the extent that supply and demand for that commodity are somewhat "elastic," that is, they respond to changes in prices and to the extent that there is some competition among suppliers, an export tax contains the seeds of its own demise. That is, demand may be curtailed and/or shifted to states where prices are lower (presumably because there is no excise tax); producing companies may shift their locations to other states to avoid the export tax. Mining companies, facing the combined control over low sulfur coal reserves by a very few states, have no such option. Where demand is inelastic and doesn't change much as price increases, and where a state or a group of states has a monopoly on the supply of a resource or commodity, marketplace forces are not effective deterrents to the imposition of export tariffs by one state or another, and regulatory action may be required.

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[2] The need for national control over interstate commerce was one of the forces giving rise to the Constitutional Convention of 1787. The earlier Articles of Confederation, adopted during the Revolutionary War limited Congressional control over trade to trade with Indians. Consequently, state legislatures imposed tariffs on goods coming in from other states and from other countries. Seaport states financed their governments through the imposition of import taxes on European goods coming into their ports but destined for consumption in other states. James Madison described the plight of states with no seaports: "New Jersey, placed between Philadelphia and New York was likened to a cask tapped on both ends; and North Carolina, between Virginia and South Carolina, to a patient bleeding on both arms." (J. B. McMaster, History of the People of the United States (1893) quoted in Congressional Quarterly's Guide to Congress, 2nd edition, p. 194.)

To what extent does the latter description fit the case of Montana's and Wyoming's severance taxes? In 1977, Montana and Wyoming together contributed only 10 percent to total U.S. coal production. But by 1990 these two states are expected to account for 35 percent of U.S. production. According to the latest reserve estimates by the U.S. Bureau of the Mines, Montana and Wyoming contain 40 percent of total U.S. coal reserves and 50 percent of strippable reserves. Most important, Montana and Wyoming together contain fully 68 percent of the nation's low sulfur coal reserves.

This position, conferred by nature, is reinforced by national energy policy and federal environmental regulations. These have unwittingly given a boost to the monopolistic position in which Montana and Wyoming find themselves with respect to coal production. The National Energy Act of 1978 specifically mandates the increased production of coal and the conversion of oil-fired capacity to coal-fired capacity. At the same time that our national policy is mandating increased coal production, environmental concerns emphasize the use of low sulfur coal. And it is in Montana and Wyoming that the bulk of low sulfur coal reserves are found. They need not fear competition from alternative energy sources, within wide limits.

This means that both Montana and Wyoming may levy *ad valorem* taxes at almost any level with little expectation that *their* imports from other states will be taxed, and in the confident expectation of growing state tax revenues. The only limit would be the states' guess at the level the Congress would find outrageous.

What are some of the economic consequences of this circumstance for the nation as a whole? Ms. Streiter will set these forth in detail. I will add only that high severance taxes channel funds from the many to the few; at least marginally reduce incentives to switch from oil, although by how much is difficult to determine; and discourage the efficient development of coal resources. These effects are all contrary to broad national goals (including having American industry remain competitive in world markets), are in the long run inflationary, and contravene the national energy policy which your Chairman has worked so hard to fashion.

But severance taxes or any other kind of excise tax levied by one state and borne by the residents of another have implications that transcend the boundaries of energy and economic policy. Taxation, along with subsidies, entitlements, and grants-in-aid, are favorite ways governments have of redistributing income based on political and social choices of who should get more, who less, and how much should be redistributed. The severance taxes in question perform a similar function, with one important difference. Government policies and legislation that have the effect of redistributing income are usually made by policymakers accountable to the population who will bear the costs or reap the benefits of such redistribution. In the case of Montana and Wyoming the population that will pay the bills associated with those taxes are out-of-state residents who cannot vote the Governors or the legislatures out of office.

By 1987, Montana's and Wyoming's coal severance taxes will be paid by consumers in about one half of the states in the country (Exhibit 2). In that year, 81 million consumers in 23 states will be paying $360 million in taxes, annually, to the 1.4 million residents of Montana and Wyoming even if coal prices do not rise, as they almost certainly will, given escalation clauses in coal contracts.

But the direct revenues do not represent the only way in which Montana and Wyoming residents will benefit. Federal revenue sharing formulas are based in part on local and state tax efforts. Presumably, the theory is that federal funds should flow in greater proportion to those states willing to tax their own populations. But these states have found a way to tax residents of other states and use those proceeds to garner a larger share of federal revenue sharing, thereby compounding the felony. This increment to Montana's and Wyoming's shares of the total federal pie will come at a time when that pie is not likely to be growing. Because of the increased flow from state severance taxes, Montana has leaped from 16th among states in total per capita payments made to date to 10th in the nation in per capita revenue payments. Much of this change is due to increased state and local tax "effort," an important element in the revenue-sharing formula.

I have described to you the potential and actual impact of severance taxes on coal production in Montana and Wyoming. But nothing I have said should be taken to mean that states should be barred from setting taxes on their "exports" to recover the environmental and social costs associated with energy production. Consumers of energy should not be permitted to turn the Western states into energy colonies: they should pay the full economic, environmental and social cost of the energy they demand. But Montana's severance tax has nothing whatsoever to do with the social and environmental costs of coal production. Regulatory statutes, of which Montanans are justly proud, plus a variety of other taxes well within the aggregate 12.5 percent limit called for in H.R. 6625 and H.R. 6654, would more than do that job. Our studies, to be covered in detail by Ms. Streiter in her testimony, show that environmental costs are already internalized--paid for by producers and, hence, by consumers in the price of coal--and that social costs (hospitals, schools, etc.) come to under 2 percent of the value of coal in Montana. The ceiling set in this proposed legislation would cover impacts many times anything foreseen.

The point is that the line between obtaining reimbursement for environmental and social costs, on the one hand, and extracting burdensome taxes from unrepresented, tied consumers on the other, is generously drawn in this legislation. Let's look briefly at the specific nature of the costs involved, and their magnitudes.

Coal is a non-renewable resource: once used, for all intents and purposes, it will not be available for use again--although in the cases of Montana and Wyoming, with their vast resources, this is almost a tautology. At current levels of consumption, Montana and Wyoming would fill the entire U.S. demand for coal for the next 200 years; at the doubled production rates projected for 1990, their now-known reserves would last a century. The impact of coal mining, particularly strip mining, on the environment may be substantial. Land that is strip mined, without reclamation, may not be usable again. The social and economic impacts of coal mining may be disruptive to communities suffering from "boom-town" syndromes, and costly to state and local governments. The influx of new miners and their families creates an immediate need for services--schools, hospitals, and housing. The proponents of Montana's and Wyoming's severance taxes have justified the high rates and the attendant high levels of state and local tax revenues by suggesting that these revenues are necessary to offset the economic or social costs that will be borne both by these states' present populations as well as by future generations. If the objective of the tax is to offset the social costs of state and local impacts, then those costs must be ascertained and compared with the revenues from taxes related to coal production.

There are several types of impact costs that coal production may impose on Montana and Wyoming--social and economic costs associated with population growth and costs associated with environmental damage or environmental changes that may accompany coal mining. However, potential benefits should not be excluded from our calculus of impact. Potential benefits reaped by Montana's and Wyoming's populations may include increased employment and personal income.

The major source of social and economic costs associated with Montana's and Wyoming's growing coal production will be the immigration of miners from out of state. These miners will need housing, sanitation, health, law enforcement, recreation and other local and state public services. There will be a concomitant expansion of employment in the service sectors. To the extent that increases in secondary employment are met by additional migration from out-of-state, additional public costs will be entailed. NERA analysts have used a county by county model developed by Argonne National Laboratories to project the coal production impact costs to local governments in Big Horn and Rosebud Counties in Montana through 1990. The model projects the annual changes in employment and population (both primary and secondary), and the dollar costs of constructing and operating the public facilities and services necessary to accommodate annual additions to the population.

The model results show that an increase of production from the 26 million tons mined in 1978 to a level of 75 million tons in 1983 would induce new mine employment of about 1,000 persons and new population of 1,500. Costs of public services for this population are estimated to reach approximately $1.3 million (1979 dollars) in the year of peak impact. These costs reflect the assumption that not all new mine employment will be the result of immigration of workers; we can expect some employment of local people. (Even if we assume all new employment comes from migrants, the model projects local and state impact costs of $3.3 million.)

If we include an impact cost to reflect the extreme assumption that newcomers pay no taxes but impose burdens on the state at approximately the level of current residents (although there is no reason to believe that the new residents will not pay their way in taxes), this adds a further $1.2 million to costs. We have also added the cost of mine inspectors and various coal-related state employees, estimated at $600,000. The total impact costs on state and local governments are approximately $2.5 million in the year of peak impact. These costs include hospitals, schools, county highways and virtually every other identifiable public service.

What about environmental costs? While it is almost self-evident that strip mining imposes real costs as a result of expenditures needed to repair damage as well as costs related to damage that may remain unrepaired, environmentalists at the federal and state levels have ensured that there is virtually no chance that the state of Montana will have to bear those costs. To open and operate a mine in Montana, thirty environmental laws must be complied with, and mining plans must be submitted and approved before mining begins (these plans run up to 10 volumes). If any damage to the environment is suspected, mining plans are rejected. State mine inspectors, all environmental scientists, visit the mines every two weeks; federal inspectors come quarterly. Mines are required to install weather stations with air monitoring devices, stream gauging stations, and observation wells to monitor water quality. The soil is tested repeatedly by the U.S. Forest Service. If it appears that mines will threaten existing wells, plans are disapproved. If a well on someone's property is destroyed, the mining company is required to dig another. Mine operations must reclaim the land mined within two years after completion of mining activities. In 1979, reported reclamation costs averaged $5,000 per acre. Failure to comply with reclamation requirements would result in fines of up to $5,000 per day and revocation of mining permits for the mine operator. To further ensure that the costs of reclamation will not be borne by the state or its residents, mining companies must post a bond for the full cost of reclamation. These funds are not released for 10 years following reclamation. Reclamation standards are among the strictest in the nation. In Wyoming, the state Department of Environmental Quality has asked Iowa Public Service Company (IPS) to include sagebrush seed in its reclamation plans, at a cost estimated by IPS to reach $150,000. At the same time, the U.S. Bureau of Land Management is aerially spraying large areas to eradicate sagebrush.[3]

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[3] "Reclamation Improves with Age," Coal Age, May 1980, pp. 162-169.

It appears that all of the known potential environment damages that may occur as a result of strip mining have been subjected to a regulatory climate that has left "no stone unreturned." There is of course the possibility that in the future we will find environmental changes have occurred that were unaccounted for, given the current "state of the art" in measuring environmental damage. That, of course, is a risk. But I suggest that when we look at the revenues generated by numerous federal programs against just such an eventuality, they far exceed, even for the most active imagination, the funds needed to maintain "risk" or "contingency" reserves. As Exhibit 1 shows, we have a variety of mechanisms already in place at the national level that ensure that, in the very unlikely event that some now-unforeseen environmental costs must be borne by the state, these will not be an undue burden on Montana's population. Two federal taxes levied on coal production provide funds that are funnelled back to states to offset potential deleterious effects of mineral production. The Surface Mining Control and Reclamation Act of 1977 levies a 35 cent tax on each ton of strip-mined coal and 50 percent of this money is returned to the state from which it originated for the purpose of reclaiming strip-mined land. An additional 20 percent of fees may become available to states under the Rural Abandoned Mine Program. The Surface Mining Act program began operating on January 1, 1978; Montana and Wyoming had production levels to warrant

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receipt of $15 million in 1978, and $18 million in 1979 from this fund. Although these funds are to be used for reclamation, the surplus of revenues over reclamation costs may be used for socioeconomic impact costs.

At present, there are three state production taxes in Montana, the Gross Proceeds Tax, the Resource Indemnity Tax and, of course, the Severance Tax. The rate of taxation for all three taxes is approximately 35 percent. As Exhibit 1 shows, in 1979 the two non-severance taxes alone generated revenues equal to four times the environmental and social costs associated with coal production. For Montana, NERA studies estimate the revenues that the present state tax rates will generate through the year 1990, using the state of Montana's own production estimates for the period 1980 to 1990. By 1990 Montana is expected to be producing 85.6 million tons of coal. If we assume no real price increase, the annual revenues accrued by the state as a result of these three taxes will reach a level of over $200 million per year by 1990 or over 30 times the maximum annual local impact costs of $5.5 million per year by 1990 (in constant 1980 dollars).[4]

Even if we assume a reduction in the severance taxes of both states to 12.5 percent, we find that revenues will still escalate to a level over 10 times greater than impact costs by 1990. Can we justify this excess of revenue over calculated impact costs on the basis of the need for a trust fund to pay future costs of currently unknown or unaccounted for environmental damage?

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[4] The figure of $200 million is derived by using a 1990 estimated production of 85.6 million tons at an average price of $8 per ton multiplied by a 30 percent tax. (Old contracts average $5--new contracts average $10.) The impact costs of $5.5 million reflect a per ton cost of 6.5 cents in 1979 dollars (5 cents in 1975 dollars) and a production of 85.6 million tons.

Perhaps we need first pose another question. Should Detroit have levied a "severance tax" on its automobiles going to Montana, to prepare for the event, once thought highly unlikely, that the American automobile industry would experience near financial disaster? Between 1974 and 1978 Montana's imports of Chrysler automobiles declined by 35 percent. Should Detroit have established a trust fund, in advance to mitigate the boom-town effects of unemployment and urban blight that are accompanying the failing automobile industry in Detroit, due in part perhaps to Montana's declining consumption of Chrysler's automobiles?

The answer of course is "no." A "contingency fund" in advance of unknown environmental or social impact costs suggests that we don't have adequate mechanisms at the national level to deal with these contingencies when they arise. The federal government has in fact already established a variety of programs that are potentially significant sources of funds to mitigate social, economic or environmental impacts to coal producing states. I have previously mentioned federal reclamation funds available from the Surface Mining and Reclamation Act and the potential surplus that may be used to offset social and economic effects. Other agencies which provide potential sources of impact funds include the Environmental Protection Agency which offers waste treatment construction grants, the Housing and Urban Development Agency which provides Community Development block grants and provides discretionary funds for non-metropolitan areas and for the Secretary of HUD to use where needed, the Soil Conservation Service which has a resource conservation and development program, watershed protection and flood prevention program, the Farmers Home Administration which provides low to moderate income housing loans and rural rental housing loans, and a variety of others too numerous to mention.

Moreover, federal social insurance programs such as unemployment insurance and public assistance programs such as Aid to Families with Dependent Children (AFDC) and Medicaid, are another way the costs of "boom-towns" may be offset.

Even if the state must pay some of the costs, for example, in matching federal dollars or in the form of low interest rate loans, these costs are likely to be small and to be far exceeded by the benefits coal-producing states will reap in the form of economic growth and increased wealth as a result of coal mining activities.

There is little evidence that our elected representatives in Congress are unresponsive to states or localities suffering unanticipated social, economic or environmental costs as a result of natural resources production or any other production, nor is there any reason to think they will be in the future. For a state to effect a massive redistribution of income from other states to establish in advance a "contingency" fund, as Montana has done, seems not only unnecessary but inequitable and inefficient.

The year 1973 represented the watershed of our national energy policy. The OPEC embargo in that year and the attendant shortages gave rise to a national energy policy whose cornerstone was reduced dependence on foreign oil and whose foundation rested on the self-sufficiency of this nation with respect to coal. Policymakers' exhortations to replace oil with coal were quickly followed by a legislative mandate which gave force to those requests, the Powerplant and Industrial Fuel Use Act of 1978. To add fuel to the fire of growing national demand for coal, environmental regulations encouraged the use of low sulfur coal, and the growth in demand for Western coal outpaced that of other coal producing regions of the country after 1973. The capacity of the Western states to increase production in the short run was of course limited; it takes a great deal of time to plan and begin mining operations, particularly in light of increasingly restrictive environmental controls. You don't have to be an economist to recognize that an increasing demand for coal and a relatively fixed supply in the short run will lead to a rise in prices in excess of the costs of mining; and that is of course exactly what has happened. The economist's label for that kind of windfall profit is "economic rent," but whatever term is used, economic rents may represent a substantial sum of money. Moreover, there are likely to be a number of groups vying with each other to capture these rents. In the present situation, the states of Montana and Wyoming, the railroads, the coal producers, consumers of electricity, the miners, and the federal government are all potential contenders for the "economic rents" associated with short run price increases in coal. Montana and Wyoming have effectively captured a significant portion of these rents through the imposition of severance taxes. The railroads have captured some in the form of increased freight rates.

At the same time that policymakers and the public are asking whether "windfall profits" on oil should accrue to the oil companies, we must also ask whether "windfall revenues" should accrue to Montana and Wyoming and what effect the states' skimming of these rents may have on future production of coal and on the public interest.

In the short run, existing customers of those utilities with fixed contracts will pay the severance tax as increased fuel costs are passed along by utilities. For new contracts, however, producers are likely to reduce the bids on their federal lease bonuses in an effort to reduce the burden of increased costs resulting from the severance tax. In the face of extremely high severance taxes, it is not likely that lease bonus payments can be reduced sufficiently to fully offset severance taxes and at least some of the costs imposed on producers by the tax will be reflected in an increased market price for coal. The strength of Montana's and Wyoming's market position with respect to coal ensures that these price increases will be paid by national consumers of electricity.

There is a final issue that I would like to address. You have heard testimony here that Montana's severance tax on coal is in fact lower than severance taxes of other energy-producing states when compared on the basis of cents per Btu. As an economist, I must agree with Representative Gramm who pointed out earlier the fallacy of using the Btu as a unit of value in comparing state severance tax rates. _Ad valorem_ taxes, as the name implies, are taxes on the _value_ of a good or service, and that value is generally measured in price. The price of a commodity reflects all of the elements of cost and value entailed in its use. People don't buy Btus; if they did, they could fill their automobiles with coal. Coal is worth so much less per Btu than liquid fuels that Congress is enacting an enormous subsidy to permit conversion of solid coals to liquid fuels. If all we needed were Btus, why convert one form of Btu to another? Further, the economic impact of a tax depends on its relation to the price, not some physical characteristic, of the fuel. Btu comparisons just don't make any more sense than a comparison of coal with diamonds, based on their carbon contents.

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The problem is an important one: it involves large sums of money, just how large no one can tell. But more than that, it involves the question of whether the federal government can prevent states from appropriating to themselves monies otherwise meant for the federal treasury or millions of consumers' pockets. If Congress doesn't choose to protect the nation as a whole from individual states' rapacity now, the problem several years from now may be of such magnitude as to make solutions even more difficult to devise.

EXHIBIT 1

ESTIMATED NET BENEFIT TO MONTANA FROM COAL PRODUCTION

1979

		Costs	Income	Balance
		----(Million Dollars)---		
		(1)	(2)	(3)
COSTS				
Environmental				
1. Preparation and Review of EIS's	Paid Directly by Producers			
2. Air and Water Monitoring by Bureau of Mines				
3. Soil Testing by U.S. Forest Service and Montana State University				
4. Reclamation to Original Contour and Native Flora				
5. Replacement of Acquifers and Wells		$0.0		
6. Salaries of State Mine Inspectors		0.6	-	
Socioeconomic				
7. Local Services and Facilities		0.9		
8. State Expenditures		0.9	-	
(Total)		$1.8		
Total Environmental and Socioeconomic Costs			-	($2.4)
INCOME				
Federal				
9. Surface Mining Control and Reclamation Act of 1977				
- 50% of 35¢/Ton			$ 5.7	
- Abandoned Mine Program			2.3	
10. Power Plant and Industrial Fuel Use Act			0.3	
11. Mineral Leasing Act Amendments of 1977			0.8	
State				
12. Resource Indemnity Tax			0.9	
Local				
13. Gross Proceeds Tax			8.5	
Total Federal, State and Local Income (excluding Severance Tax)				$18.5
NET INCOME EXCLUDING SEVERANCE TAX				$16.1
SEVERANCE TAX			$66.9	
TOTAL NET INCOME IN 1979				$83.0

ESTIMATED NET BENEFIT TO MONTANA FROM COAL PRODUCTION

1979

NOTES

Lines 1-5: For a detailed discussion of the environmental costs paid directly by the producers see the testimony submitted by Ms. Streiter.

Line 6: Assumes 30 state inspectors and other coal-related personnel are employed at an average salary of $20,000. Based on review of Montana State Budget.

Line 7: Includes costs of services and facilities for hospitals, social welfare, police, fire, sewage, solid waste, recreation, libraries, general government, water treatment and education as estimated by Argonne National Laboratory's Social and Economic Assessment Model (SEAM). These costs are calculated for the peak year of expenditures, for a growth in production of 50 million tons to 1983. Original estimate in 1975 dollars has been escalated to 1979 dollars and applied to an output of 32.5 million tons for 1979.

Line 8: The SEAM Model estimated incremental population of 1,500 for 50 million tons incremental production. Assuming these people pay no taxes but require the average level of services gives 2 cents per ton in 1975 dollars. Original estimates escalated to 1979 dollars and applied to output of 32.5 million tons.

Line 9: Under this Act, 50 percent of the 35 cents per ton Federal Tax is allocated directly back to the state and an additional 20 percent is available under the Abandoned Mine Program. Estimate based on 1979 production of 32.5 million tons.

Line 10: Title VI of the Powerplant and Industrial Fuel Use Act makes funds available to energy impacted states. Allocation is based on expression of need by state governors and is subject to approval by federal authorities. This amount is reported to have been paid in 1979.

Line 11: Under this Act, 50 percent of the royalties, bids and bonuses collected from production on federal lands is returned to the originating state. Estimate based on actual 1978 funds returned to Montana, and adjusted for the increase in production from 1978 to 1979.

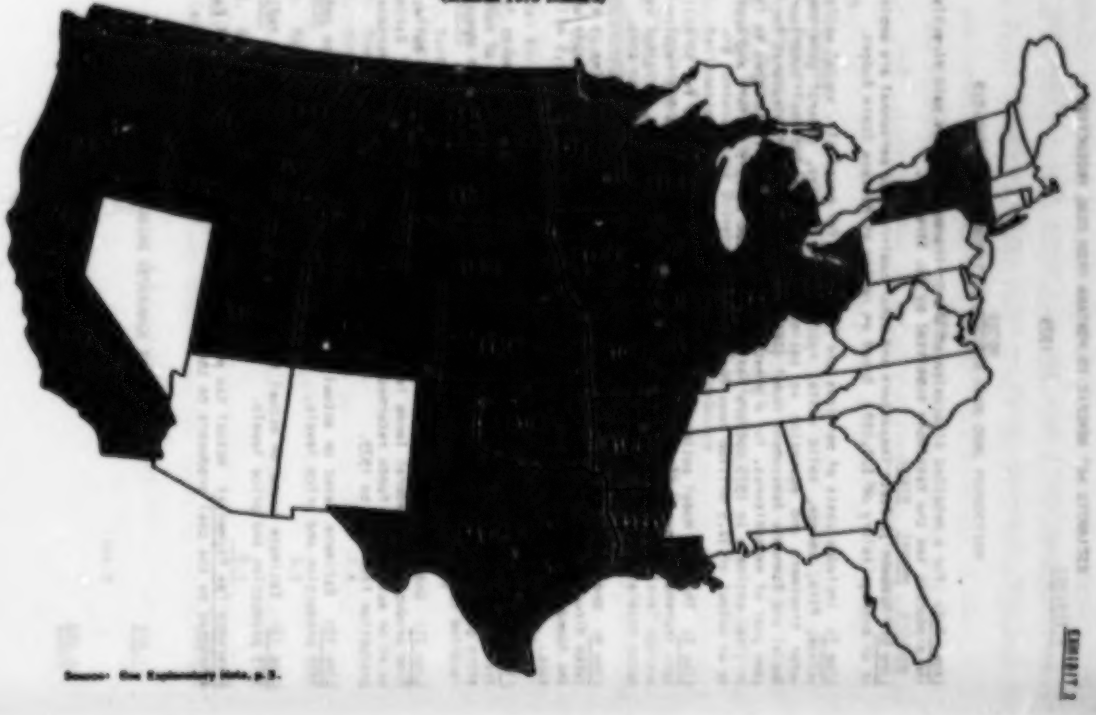
Line 12: Estimate based on actual tax payments in 1976 and adjusted to refect 1979 production and price levels.

Line 13: Estimate based on actual tax payments in 1976 and adjusted to reflect 1979 production and price levels.

Severence Tax Payments: Actual tax payments in 1979 as reported on COAL-1 Forms submitted by the coal producers to the state.

ESTIMATED SEVERANCE TAX PAYMENTS TO MONTANA AND WYOMING IN 1987

(Million 1978 Dollars)



Source: See Explanatory Note, p. 3.

ESTIMATED SEVERANCE TAX PAYMENTS TO MONTANA AND WYOMING IN 1987

(Million 1979 Dollars)

The estimates in this Exhibit are based on actual deliveries of Montana and Wyoming coal in 1978 and demand for new units to be built between 1979 and 1987, as reported in a study prepared for the Department of Energy by Argonne National Laboratory.[1] State-by-state severance tax payments were estimated as follows:

Existing (1978) demand, that is for contracts which are currently being met, is assumed to remain in effect at its current level. Total severance taxes paid in 1978, as reported by the Montana and Wyoming Departments of Revenue, were allocated based on the share of 1978 deliveries to each state. 1978 payments were then escalated by a 10 percent inflation factor to determine 1979 payments. No further adjustments were made to allow for future price increases in current contracts.

Severance tax payments for supplies to new units reflect current severance tax rates (30 and 17.5 percent) and assume an average contract price of $10 per ton. These were applied to the state-by-state new demand for Montana and Wyoming coal to estimate total payments for new demand.

Both new and existing deliveries were adjusted to reflect shipments by wire. Total payments of $370 million in 1987 reflect the sum of new and existing payments.

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[1] Argonne National Laboratory, A Survey of Electric Utility Demand for Coal, August 1979.

Mr. **DINGELL.** Our next witness is Mr. Parsons.

STATEMENT OF EDWARD M. PARSONS, JR.

Mr. **PARSONS.** Again, Mr. Chairman, I am Edward Parsons, cor missioner of the Public Service Commission of Wisconsin, and I a here on behalf of the commission to testify in support of H.R. 66 and 6654.

In Wisconsin we are consuming considerable quantities of wes ern coal for the purpose of electric generation, and increasin severance taxes imposed by the exporting States are having an will continue to have a serious impact on the cost of coal t Wisconsin utilities, and therefore on the cost of electricity to Wi consin consumers.

At present, approximately 60 percent of Wisconsin's total electri energy requirements are supplied from coal-fired generatin plants.

At present, Montana and Wyoming supply about 30 percent o Wisconsin's total needs for electricity generation. This percentage will rise to at least 50 percent by 1985, when four large coal-fired generating plants now under construction will go into service.

Wisconsin's reliance on low-sulfur western coal will continue to expand. This expansion reflects the commission's belief that a critical goal for this Nation in the 1980's is the attainment of energy self-sufficiency. High severance taxes increase the cost of domestic energy relative to imports, and as a result energy self-sufficiency becomes more difficult to attain.

Current severance taxing policy invites retaliation and could lead in the commission's view to a balkanization of the American energy market as each State seeks to tax the energy resources under its control. The net result is likely to be that all domestic energy sources will be more expensive, and that therefore imported oil will continue to maintain its large share of the U.S. energy market.

Valuable opportunities to displace energy imports with domestic resources will be blocked by artificial tax barriers established at the State level.

The commission believes that severance taxes are certainly justified, so the question is not the principle involved, but the rate of the tax. The Wisconsin commission believes that the tax rate should bear some relation to economic and environmental impact and production cost.

Allow me to return to Wisconsin's situation for a final comment. Although this comment holds for other States as well, in this instance where a necessity of life, energy, is involved, the Wisconsin ratepayer in effect faces a triple monopoly situation.

Not only must the ratepayer purchase energy from the monopoly utility, it must also shoulder the rail transportation costs for a captive commodity, and the ratepayer must bear the severance taxes on the low-sulfur coal which Wisconsin utilities are compelled to purchase.

In our view, the ratepayer needs your help, your support for this legislation. Energy policy is a national concern, and we cannot afford to have a few energy-rich States prosper to the disadvantage of the rest of the Nation.

Conversely, energy-rich States should realize some financial benefit from the natural wealth found within their borders, and these States should not be expected to alone bear the environmental and social costs associated with the production of coal.

The Wisconsin commission feels that H.R. 6625 and H.R. 6654 strike an equitable balance in protecting both the Nation and the energy-rich States' interests and needs.

Thank you for allowing me to enter these comments.

[Testimony resumes on p. 321.]

[Mr. Parson's prepared statement and attachments follow:]

**Statement of COMMISSIONER EDWARD M. PARSONS, JR.
in support of H.R. 6625 and 6654, legislation
to further the objectives of national energy
policy of conserving oil and natural gas through
removing excessive burdens on the production of
coal.**

**Subcommittee on Energy and Power
House Interstate and Foreign Commerce Committee
Hearing on H.R. 6625 and 6654, June 5, 1980
Washington, D.C.**

Mr Chairman. Members. My name is Edward M. Parsons, Jr. I am the senior Commissioner of the Public Service Commission of Wisconsin. With me is the Commission's Washington Counsel, Philip J. Mause.[1]

I offer the following testimony in support of H.R. 6625 and 6654 on behalf of the full Commission[2] and the more than 1,800,000 Wisconsin energy consumers who have a direct stake in the coal severance taxes extracted by western states.

**1/ Kadison, Pfaelzer, Woodard, Quinn & Rossi
Washington, D.C.**

2/ The Public Service Commission of Wisconsin indicated its support for H.R. 6625 and 6654 in a letter of May 7, 1980 to Chairman Dingell with copies to Energy and Power Subcommittee Members. It is appended hereto as Attachment A.

The primary responsibility of the Public Service Commission of Wisconsin is the regulation of public utilities to insure the provision of reasonably adequate electric, gas, telephone, and water and sewer service to the public, without undue or unjust discrimination, at rates that are reasonable and just.

My testimony will first focus on Wisconsin and then assume a national perspective.

COAL SEVERANCE TAX IMPACT ON WISCONSIN

Wisconsin's Reliance on Western Coal

Wisconsin electric consumers are heavily dependent upon coal for electricity generation. Approximately 60 percent of Wisconsin's total electric energy requirements are supplied from coal-fired generating plants (see Attachment B). At present, Montana and Wyoming supply about 30 percent of Wisconsin's coal needs for electricity generation. This percentage will rise to at least 50 percent by 1985, when four large coal-fired generating units, now under construction, will be in service. These units were licensed between 1975 and 1979, under 1975 clean air regulations, at a time when the utilities were planning for balanced additions of both coal and nuclear units.[3] Burning western coal was the most economic way to meet pollution emission regulations. As a condition of securing state air permits for these units, the utility in each case was required to provide assurance of a long term supply of low sulfur coal from a designated supply source.

Wisconsin's reliance on low sulfur western coal will continue to expand. This expansion reflects the Commission's belief that a critical goal for this nation in the 1980s is the attainment of energy self-sufficiency. It also reflects the state's current moratorium on nuclear plant planning and construction.[4]

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[3] 1977-1993 additions were originally planned to be 54 percent coal, 41 percent nuclear. Changing forecasts of demand, relative costs of construction, and state regulatory decisions led to preferential cancelling of nuclear plans.

A third and critical factor compelling an expanding reliance on low sulfur coal is the increasing acid rain threat to Wisconsin's most prized natural resources--her lakes, rivers and forests. Aquatic habitats in Wisconsin are particularly vulnerable because of the low buffering capacity of state waters. And concern has been growing over possible adverse acid rain effects on Wisconsin agricultural crops. Beyond the Wisconsin Commission's understandable parochial concern in protecting the Badger state against adverse acid rain impacts, the Commission is mindful too of the obligation to protect against the atmospheric dispersal of Wisconsin electric generation by-products to our neighboring sister states.

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[4] In a 1978 decision the Public Service Commission of Wisconsin imposed a nuclear moratorium banning the planning and application for additional nuclear generation until such time that the Commission determines that reasonable progress is made in resolving waste disposal, fuel supply, and decommissioning issues. The state's existing four nuclear units provide approximately 31 percent of Wisconsin's utilities' actual generation output.

In short, Wisconsin energy consumers are becoming increasingly dependent upon those who control low sulfur coal deposits.

Coal Severance Tax Impact on Wisconsin Consumers

Data compiled by the Public Service Commission of Wisconsin indicates that Wisconsin purchases of Montana and Wyoming coal were approximately 5.0 million tons in 1978, and will be approximately 8 million tons in 1980; purchases of 12.5 million tons are projected for 1985 as additional units scheduled to go into service come on line. The 1978 and 1980 volumes resulted in severance taxes of $7.9 million in 1978; $9.3 million is projected for this year. If current trends continue, Wisconsin consumers can expect to transfer $13.4 million of income (in 1980 dollars) to Montana and Wyoming residents in 1985 based on projected imports of 12.4 million tons of coal in 1985.[5/] (Data summarized in Attachment C.)

[5/] These data include the 13 percent Wisconsin portion of the Northern States Power Company (Minnesota) coal purchases and related severance tax amounts incurred in serving Northern States Power (Wisconsin) customers.

What do these numbers mean to the individual Wisconsin energy consumer? Coal costs (with severance taxes rolled in) account for approximately 20 percent of a Wisconsin energy consumer's bill for electric service. As the commodity price of the coal increases, so too does the severance tax dollar amounts which are rolled in. Moreover, both the commodity and severance tax increases are passed on to the consumer.

Montana's 30 percent severance tax currently amounts to about $1.47 per ton delivered to Wisconsin for a total cost per ton of approximate $19.12. Wyoming's 17 percent tax amounts to $0.87 per ton delivered for about $24.50 per ton.

COAL SEVERANCE TAX IMPACT NATIONALLY

At long last, King Coal is being restored to its former pre-eminence. Just two weeks ago an M.I.T. report, "Coal-Bridge to the Future," optimistically concluded that coal can supply from one-half to two-thirds of all the additional energy needed by the world between now and the year 2000. The study argues that the United States should play the pivotal role in helping to meet this demand. Last April the National Coal Association predicted that coal production in the U.S. should reach 800 million tons this year, a 3.9 percent increase over 1979. According to the Association, Western coal production is expected to enjoy a 23 million ton increase to 239 million tons.

Certain western states have chosen to exercise the advantage they have gained as a consequence of the world's and nation's energy situations and policies. These states have imposed substantial severance taxes on the production of coal within their borders, taxes which are out of proportion to the legitimate need of these states to meet the direct and social costs of increased coal production. This excessive taxation inhibits rather than encourages the growth of coal production and thereby runs directly counter to the national policy of increased reliance on coal.

In fairness, no one can argue against the right of a state to take advantage of its natural resources--especially those resources which, by their very nature, cannot be replaced. Where resource extraction might permanently affect land and water resources,[6] some compensation of present and future generations is justified.

The Wisconsin Commission is aware that environmental and social costs associated with the coal industry in western states are significant: stress is placed on municipal services, water and sewage treatment facilities require upgrading, improved or new transportation corridors become necessary, and precious water resources are depleted or contaminated. Already hard-pressed by national inflation levels, residents of western coal communities may be subject to even higher inflation rates due to rapid local economic expansion caused by the development of area coal sources.

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[6] Land reclamation will be experimental until reclaimed areas successfully withstand a drought. Salts and trace elements from overburden may contaminate groundwater and eventually contaminate surface water. Where mining disrupts an aquifer, springs could be affected.

No one should advocate the denial of reasonable tax revenues to a state. But let us look at some facts...and consider what is reasonable...and what is not reasonable.

- Montana has escalated its severance tax rate 3 times during the 1970s, although it had not changed the rate for half a century.
- Montana's coal severance taxes have increased by 350 percent in the few years since the nation's energy policy called for a conversion from oil to coal.
- Montana's and Wyoming's severance tax rates are at the 30 percent and 17 percent level, respectively. Two other large coal producing states, Kentucky and West Virginia assess, respectively, charges of 4.6 percent and 3.5 percent.
- Half of Montana's severance tax revenues are parceled out for government projects and services normally supported by property and income taxes, e.g., schools and highways. The other half are salted away in a permanent trust fund, the approximate 50 percent amount allegedly necessary to alleviate future problems caused by coal development.
- The National Coal Consumers Alliance estimates that the funds necessary to compensate Montana for the direct costs, as well as for the social costs,

associated with coal mining can be covered by a tax of 2 cents per ton of coal. The 30 percent severance tax reaps approximately $1.50 per ton--more than 75 times the revenue needed to cover governmental expenses.

- Much of Montana and Wyoming coal is mined from federal lands. Fifty percent of the coal royalties collected by the federal government are returned to the two states, along with direct grants (under the 1978 Fuel Use Act) intended to ease the impact of mining activities.
- Some federal grants, such as revenue sharing, give a state or locality extra dollars if the jurisdiction makes a substantial "tax effort", notwithstanding the source of the taxes. The same holds true for any welfare assistance federal distributions based on tax revenues and rate formulas.

A Rand Corporation report[7] summed it up well, I think, crediting Montana with "OPEC-like revenue maximization." What seems to be clearly shown is that there is no true relationship between the 30 percent and 17 percent tax rates presently charged and the current or projected revenue needs of the states. One can only conclude that these states are exporting their revenue needs to already hard-pressed utility ratepayers in other states.

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[7] "Coal Development and Government Regulations in the Northern Great Plains: A Preliminary Report" Published 1977.

Of course, such taxing policy invites retaliation and could lead to a "balkanization" of the American energy market, as each state seeks to tax the energy resources under its control. The net result is likely to be that all domestic energy sources will be more expensive and that therefore imported oil will continue to maintain its large share of the United States energy market. Valuable opportunities to displace energy imports with domestic resources will be blocked by artificial tax barriers established at the state level.

Severance taxes are certainly justified, so the question is not the principle involved, but the rate of the tax. The Wisconsin Commission believes that the tax rate should bear some relation to economic and environmental impact and production costs. I have already noted the National Coal Consumers Alliance estimate that these costs could be covered by a tax of about 2 cents per ton, rather than the present $1.50 to $1.95 per ton. No other state matches Montana's or Wyoming's high severance tax rates on exported resources--whether these resources be renewable or nonrenewable.

Artificial ceilings are generally poor public policy, but are occasionally necessary to prevent some entity from taking advantage of a special situation. Such is the case with public utilities. In the absence of a workable competitive market place, some level of government regulation is substituted to achieve the results of competition, so that the customer of the monopoly utility is protected.

The Commission believes that Montana and Wyoming also represent in this case special situations because of their commanding market position and because of the extent to which they are pushing their advantage. By a commanding market position, I refer to the fact that these two states are blessed with approximately 40 percent of the nation's total coal reserves and they also possess better than two-thirds of the nation's reserves that contain less than one percent sulfur. According to the U.S. Department of Energy, utilities in twenty states now burn western coal, and the list is likely to grow as the federal government's policy of converting plants from natural gas and oil to coal is implemented.

The Commission cannot say whether the 12.5 percent limitation proposed in H.R. 6625 and 6654 would be the most precise...the most equitable. ..across the board ceiling. The 12.5 percent level does correspond to the present royalty payment on federal leases. In fairness to ratepayers in the coal-consuming states, the Commission trusts that Congress in its wisdom will see fit to draw the line--and draw that line closer to 12.5 percent than to 30 percent. From the Commission's point of view as regulators, from the information and testimony we have read and from Public Service Commission staff reviews, the Commission believes it can say with some assurance that the proposed legislation establishes a reasonable ceiling on what coal states should receive.

The present variation in the current severance taxes may severely hinder capital cost decisions about transportation and the expansion of utility generation capacity. Involved are large scale investments and commitments. Current severance taxes and threats of increases are creating a great deal of uncertainty. This uncertainty will tend to retard the conversion to coal from oil and gas. Utilities -- and state regulators -- will be reluctant to commit substantial amounts of capital to build the facilities necessary to use coal if enormous severance taxes can be imposed at will by exporting states. As long as the uncertainty about future severance taxes continues, the economic benefits of the decision to convert to coal will be questionable and coal conversion will be delayed. Thus, the continuing threat of escalating severance taxes imposed by states results in uncertainty which obstructs important national energy policy objectives.

Allow me to return to Wisconsin's situation for a final comment...although this comment holds for other states as well. In this instance, where a necessity of life, energy, is involved, the Wisconsin ratepayer faces a "triple monopoly" situation. The ratepayers must shoulder the rail transportation costs for a captive commodity, the ratepayer must purchase energy from the monopoly utility, and the ratepayer must bear the severance taxes on the low sulfur coal which Wisconsin utilities are compelled to purchase. Gentlemen, the ratepayer needs your help...your support for this legislation.

Energy policy is a national concern. In a federal union, it is not proper for any one state or states to frustrate national policy. We cannot afford to have a few energy-rich states prosper to the disadvantage of the rest of the nation.

Conversely, energy-rich states should realize some financial benefit from the natural wealth found within their borders. And these states should not be expected to alone bear the environmental and social costs associated with the production of coal.

The Wisconsin Commission feels that H.R. 6625 and 6654 strike an equitable balance in protecting both the nation's and the energy-rich states' interests and needs.

Thank you for the opportunity to present these views of the Public Service Commission of Wisconsin.

Edward M Parsons Jr.

June 5, 1980

Edward M. Parsons, Jr., Commissioner
Public Service Commission of Wisconsin

ATTACHMENT A

State of Wisconsin \ PUBLIC SERVICE COMMISSION

STANLEY YORK, CHAIRMAN

EDWARD M. PARSONS, JR., COMMISSIONER
LEWIS T. MITTNESS, EXECUTIVE SECRETARY
Hill Farms State Office Building
Madison, Wisconsin 53702
(608) 266 1241

May 7, 1980

File No.

Honorable John D. Dingell, Chairman
Subcommittee on Energy and Power of the
House of Representatives Committee on
Interstate and Foreign Commerce
U. S. House of Representatives
Washington, D. C. 20515

Re: H.R. 6625 and H.R. 6654, duplicate bills to amend the Powerplant and Industrial Fuel Use Act of 1978 to further the objectives of national energy policy of conserving oil and natural resources through removing excessive burdens on production of coal.

Dear Congressman Dingell:

This Commission strongly endorses the above bills. Wisconsin electric consumers are heavily dependent upon coal for electricity generation. Approximately 60% of our total electric energy requirements is supplied from coal-fired generating plants and this percentage will increase as additional coal-fired units under construction (four) and scheduled for future construction are placed in service.

Your subcommittee has already been made aware of the severance taxes now being imposed by the states of Montana and Wyoming. At present, about 25% of our coal for electricity generation comes from mines in those states. This percentage will rise to at least 50% when plants now under construction are placed on line. Our Wisconsin utilities are currently paying severance taxes of approximately $5 million per year, which will rise to almost $7 million by 1984. These costs are directly passed on to utility customers.

The foregoing clearly indicates that Wisconsin consumers are directly affected by the severance tax currently being imposed by the states of Montana and Wyoming and, additionally, are vulnerable to similar high taxes being imposed in the future by other coal-producing states. The 12½% severance tax limit as provided in the above bills should provide adequate compensation for the particular states involved.

We believe it is imperative that some limit be placed on the level of the severance taxes imposed by the coal-producing states.

Sincerely,

Stanley York

Stanley York
Chairman

Edward M Parsons Jr

Edward M. Parsons, Jr.
Commissioner

Willie J. Nunnery
Commissioner

CFR:kjn

cc: Members, Subcommittee on Energy and Power
Chairman, House of Representatives Committee on Interstate and Foreign Commerce
Paul Rodgers, General Counsel, NARUC
Wisconsin Delegation (For Information)
Governor Lee Sherman Dreyfus

ATTACHMENT B

ELECTRIC GENERATION IN WISCONSIN

I. CAPACITY* BY FUEL TYPE

Coal Steam	6,060 MW	60.0%
Nuclear Steam	1,606 MW	16.0%
Combustion Turbine	1,280 MW	12.8%
Oil/Gas Steam	601 MW	6.6%
Hydroelectric	364 MW	3.6%
Diesel	103 MW	1.0%
	10,014 MW	100.0%

II. NET ENERGY GENERATED** BY FUEL TYPE

Coal	24,200,000 MWH	60 %
Nuclear	12,400,000 MWH	31 %
Oil and Gas	2,100,000 MWH	5 %
Hydroelectric	1,600,000 MWH	4 %
	40,300,000 MWH	100 %

* March 1, 1980

** 1980 Estimate Based on 1978 Data

Source: Public Service Commission of Wisconsin

ATTACHMENT C

WESTERN COAL USE AND RELATED SEVERANCE TAX DATA FOR WISCONSIN UTILITIES

	1980	1985
Projected Coal Purchases in Tons	8.49 Million	12.45 Million
Projected Gross Severance Tax Payments (1980 $)	$9.3 Million	$13.4 Million
Projected Gross Severance Tax Payments in Excess of 12.5% (1980 $)	$4.5 Million	$5.5 Million

Source: Public Service Commissi
of Wisconsin

Mr. **Dingell**. Commissioner, we thank you very much for your very helpful testimony.

Ms. Howard, you are next.

STATEMENT OF ALICE HOWARD

Ms. **Howard**. I do not know about you all, but I am going to do myself a favor, and I am not going to read my testimony, because it is going to be submitted in the record.

I would like to make the point that I am here not with the profit motive in mind. We are consumer owned. If you get your electricity from the co-ops in Louisiana, you are an owner.

I just want to tell you about something that happened about 7 years ago to me that I think applies to Congress and applies to Montana and Wyoming. When I came to Baton Rouge to go to work for the Governor, and I worked for him for 8 years, I found out the common citizen did not have a way to communicate with government without going to several agencies and being shuffled from here and yonder, so I proposed putting in a toll-free line where the citizens could call in, and they did. We had to put in a second toll-free line so they could ask questions or request information from any State agency, and they had to get an answer back. We made sure they did.

I got a call from an old lady who was extremely depressed and crying, and I took the call from the girl who answered it and talked with her. She said that her son had committed suicide, and her grandson had recently died in a motorcycle accident, and she was on medicare and medicaid, and she, under the new policy, had to fill in a new application, as they were reevaluating everyone.

She did not have the money, because she paid someone to drive her to the doctor, but she registered the letter anyway, and it cost her 80 cents. They sent back a notice saying she was cut off from benefits because they did not have a record that she had sent her application in, and she had the registration receipt.

I started calling the State agencies, and they all said: "It is not our problem. We do not have it. She is not registered."

It took me a couple of weeks, and I ended up saying something that has stuck in my mind for the last 8 years. I told those people: "You are not the masters; you are the servants of the people. You are there to serve the people, so you must find her application."

I gave them the number. They eventually found it, and that lady had been contemplating suicide.

I represent rural Louisiana. The average income is less than $7,000 a year. We are buying and will be buying 6 million tons of low-sulfur Wyoming coal per year. We have the first coal-fired plant in Louisiana. My generating plant is sitting on one of the largest natural gas strata in the Nation, the Tuscaloosa trend. Our plant is sitting on that gas, and we cannot use it.

Our one gas-fired unit has to be phased out by 1990, but our gas contracts end in 1986. That gas is leaving Louisiana under highly regulated prices. My elderly and rural people cannot go comparison shopping for electricity. They have no choice but to pay the price, and they have no choice but to pay this unfair tax that is put on by Wyoming.

If Wyoming follows Montana, my elderly poor consumers will be paying $9.3 million if Wyoming had raised their severance tax to 20 percent.

If Wyoming follows Montana, my consumers will be paying $1 million in coal severance taxes per year. We are not talking ab peanuts here. I am saying that every price component contribu to high utility bills. I am fighting Burlington Northern as hard a am fighting this coal severance tax. I do not care if it is $1.40 cen which is what we are paying per ton or if it is $9 or $13, Burlir ton Northern is gouging my consumers, and so are Wyoming a Montana, and I am here to fight it.

Thank you.

[Ms. Howard's prepared statement follows:]

STATEMENT ON BEHALF OF CAJUN ELECTRIC POWER COOPERATIVE, INC.
AT HEARINGS OF THE HOUSE SUBCOMMITTEE ON ENERGY AND POWER

June 5, 1980

Mr. Chairman and Gentlemen of the Subcommittee Hearings:

I am Alice Howard, Director of Public Affairs for Cajun Electric Power Cooperatives and the Association of Louisiana Rural Electric Cooperatives, who urge you to support and vote for House Bills 6625 and 6654. On behalf of our rural electric consumers, we ask you to limit state coal severance taxes to a reasonable 12.5 per cent ceiling, which we feel would be ample to allow states to obtain compensation for costs of services they actually provide to support coal production.

We are not here with the profit motive in mind. We are consumer-owned and non-profit and are allowed to pass on fuel costs to our consumers. However, there is a limit as to what all consumers, especially the poor and elderly families on limited incomes, can bear. Electric service is not a commodity that one can comparison shop, nor because of inflation, that one can decide to do without.

I respectfully ask you to consider these rural consumers, not as statistics, but as that elderly lady desperately attempting to survive on an extremely limited income. Or that seventy-five year old couple on a small retirement income which won't stretch for even an occasional luxury item. Or that elderly couple who built their all-electric home when no one could foresee the energy problems this nation would face. All of these individuals have their unique problems, one of which is universal...to maintain a minimum, decent standard of living. Rural families do not mind paying their fair share. They are concerned, however, because our natural gas and oil are being shipped out of state at highly regulated prices.

Cajun Electric's two generating plants are sitting on top of one of the largest gas strata in the nation. Federal regulations will not allow us to use it. Instead, we are having to bring coal over 2,000 miles to replace this gas.

We, in good faith, attempted to comply with federal energy policies designed to conserve our supplies of gas and oil for future generations. We designed Big Cajun #2 to utilize low-sulphur Western coal to comply with these policies, along with the Environmental Protection Agency's clean air and water mandates. We executed contracts for coal in good faith; however, the ink was barely dry when Montana placed a thirty per cent severance tax on coal. For other reasons, the Department of Interior abrogated these contracts and we began purchasing higher priced coal from Wyoming. Now Wyoming is considering increasing their current severance tax from 17.075 per cent, plus an additional 3.5159 per cent tax escalation (a tax on a tax), which totals 20.5909 per cent. If they are successful in raising this severance tax to twenty-three per cent, our rural consumers will be paying $9.3 million in severance taxes. If we were purchasing our supply of coal from Montana, our consumers would be paying $12.2 million.

Because of run-away unjustified rail costs and severance taxes, preliminary studies are indicating that it would be cheaper for us to bring coal from South Africa, South America or even Australia.

If Montana is successful in retaining this exorbitant thirty per cent tax, Wyoming and other states will most certainly follow suit. This would be an additional $4 million burden placed on rural Louisiana consumers.

We recognize that we are getting into the delicate area of Federal versus States' Rights. However, federal mandates do not require us to use oil and gas to produce electricity. If fact, the opposite is true. The utility industry is mandated to use alternate fuels for the generation of electricity and is prohibited from using oil or gas in current plants after 1990. If we cannot use our own local natural gas, and are forced by these mandates to currently supplement it with costly coal, it follows that justice to our consumers requires some reasonable limitation upon both railroad transport rates and coal severance taxes. These are issues that it is imperative for Congress to address because we are all citizens of one nation who should work together on common problems.

The grave energy problems facing our state and nation have gone well beyond the crisis stage. Energy matters will continue to be a dominant issue facing Congress, State Legislatures, utilities and fuel producing companies for the remainder of this century.

We are dedicated to doing our fair share by encouraging conservation, research and development. All we ask, in return, is a fair shake for the people who must pay the bills for a commodity they cannot live without.

Thank you.

Mr. DINGELL. The subcommittee thanks you.

Mr. Beaty?

STATEMENT OF ORREN BEATY

Mr. BEATY. Thank you, Mr. Chairman.

I second everything that has been said by this panel.

We are a nonprofit coal-acquiring organization supplying coal to other nonprofit organizations, municipal power, and rural electric cooperatives. The profit motive does not enter into it at all. We are just simply trying to meet the needs, and we find that the unusually high severance taxes are adding unnecessary costs.

This year, just to give you one statistic, and this is where I will quit, we have contracted to buy 250 million tons of coal over the next 20 years from six companies, five of them in Wyoming and one in Montana, and two of them are now delivering coal to us. One of them is paying Wyoming at the rate of $1 a ton in state severance taxes through the first quarter of this year. The other is paying $1.80 a year. So, we are paying a fair share, and it is being passed on, of course, to the individual electric consumer at the end of the line.

Thank you.

Mr. DINGELL. Thank you, Mr. Beaty.

Do you have some comments, Ms. Streiter?

STATEMENT OF SALLY STREITER

Ms. STREITER. Yes, I had prepared some comments.

It is getting late in the day, so I will keep my comments brief.

I am here because, for the best part of a year, I studied this issue up and down with respect to the Montana severance tax, and I am not so familiar with Wyoming, and I have been asked to be prepared on the cost questions, so I will tell you very briefly what I know about the costs.

As far as environmental costs go, I said to my clients when they came in: "I feel sure you will take the longest time to estimate the environmental cost." It did, but not for the reason I thought. We waded through about 20 environmental impact statements, and I have to say that it is almost impossible to find a cost that might accrue to the State of Montana from coal mining after it is finished, and that is because of the very tough laws that guard it.

I did facetiously suggest that we might pull out one cost that was mentioned, which was mule deer. If you put a $10,000 price on the disturbance of a mule deer, not the death of a mule deer, a $10,000 price tag on that would come to .018 cents per ton, I think. I mean, it is vanishingly small, so I would suggest that the environmental costs, the best estimate that could accrue to the State of Montana would be virtually nil.

As far as the boomtown costs go, we did a very careful study of that, and that is where the 2 cents a ton that I think Mr. Rogers mentioned came from. I think that is the best estimate of boomtown costs. The cost is certainly there, but they are rather small, and that is mainly because there are relatively few miners involved.

We added in some more costs to the State for general services. We added in some costs for mine inspectors. We got up to 6 cents a ton. That is actually more or less what the State legislature thinks the costs are, because they have reduced the allocation from the severance tax down to effectively a 2.5-percent tax rate for impacts, and that would come very close to what we estimate the cost to be.

Thank you.

[Testimony resumes on p. 354.]

[Ms. Streiter's prepared statement follows:]

PREPARED STATEMENT OF
SALLY HUNT STREITER
VICE PRESIDENT
NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.

My name is Sally Hunt Streiter. I am an economist and Vice President of National Economic Research Associates. My testimony sets out in more detail the factual background to the testimony of Dr. Irvin Stelzer. I have also been asked to provide the further details referred to by Mr. Rogers in his earlier testimony (TR p. 87) on the estimated costs to Montana of coal development. I have made a thorough study of coal severance taxes in Montana and have visited all the large mines in that state, but am frankly less familiar with the situation in the other states including Wyoming.

The Extent and Nature of Montana and Wyoming Coal

Montana and Wyoming contain between them over 40 percent of the U.S. reserves of coal. If Montana were to mine at its current level for 1,000 years, it would not have exhausted its strippable coal, or touched its underground coal. This resource may not be renewable, but it is somewhat misleading to call it exhaustible. Although the coal had from time to time been mined for railroad purposes, this use had given way to diesel, and prior to 1970 there was relatively little mining mainly because of the distance from markets. In 1970, Montana and Wyoming produced only 9 million tons out of a national total of 600 million. Today, they produce 100 million tons between them out of a total of 775 million.

Projections to 1990 show vast increases in production from these states: DOE's middle estimate is for 525 million tons of production from Montana and Wyoming in 1990, fully 35 percent of the U.S. demand at that time.

Most of the coal from these states is extraordinarily easy to get at by strip mining. It is mined by men and women who operate huge earth moving machinery: the topsoil is removed and kept for revegetation; the earth is loosened, with explosives if necessary; and enormous draglines (or cranes) the height of a ten-story building lift 70 cubic yards of earth at a time which is deposited in a spoils pile, leaving a coal seam exposed at a depth of as little as 60 feet, along a swath 100 feet wide and perhaps half a mile long. The seam, which in some cases is 60 feet deep, is mined with trucks and shovels, and the dragline moves on to cut the next swath, the new earth being used for filling in the original hole. This is graded with tractors to the original contour and the topsoil is put back; it is seeded and watered, and within two to three years from the original shovel being put in the ground, the land is green again. The spoils pile sits there for the life of the mine, when it is moved to fill in the last hole and regraded.

Because the land is relatively flat and sparsely inhabited, unlike Appalachia or the western part of Montana where copper mining did inflict great damage, and because the coal is in such thick seams so close to the surface, this coal is extremely cheap to mine, and the productivity of both people and machines is vastly greater than that encountered in underground mining or even in strip mining elsewhere. Montana and Wyoming coal are the cheapest in the nation at the mine mouth. Why then have Montana and Wyoming only recently begun to acquire the dominant position they will surely occupy in the years ahead?

Sources of Market Dominance

First, in the years prior to 1970, Western and Southwestern demand for coal was low. Gas in the Southwest and oil in California were cheaper than coal, which had to be transported long distances. The coal regions themselves were sitting on cheap hydro power. Montana built its first coal-fired electric generating plant in 1968, a 175 mW station in Billings. But as incremental hydro resources ran out in the 1960s, Western growth had to be met by coal or nuclear power. Pacific Power & Light currently owns and operates 3000 mW of plant using Wyoming coal.

At about the same time, the late 1960s, air pollution control laws began to require sulfur controls. Montana and Wyoming control 68 percent of low sulfur coal in this country. The first large mine in Montana was actually opened to provide coal to Commonwealth Edison as a direct result of Chicago's air pollution control laws. The Federal Clean Air Act of 1970 consolidated this first impetus to cleaner air and created a Mid-western market. Great improvements in strip mining technology reduced the cost of Western mining, while the Mine Health and Safety Act of 1970 made underground coal more expensive, offsetting to some extent the high cost of transporting Western strip mined coal and making it more competitive.

The OPEC embargo of 1973 and subsequent price rises in oil and gas not only made coal a relatively more attractive option and secured its rescue from long term stagnation (total U.S. coal production in the early 1970s had barely regained the level of the 1940s); coal also became a cornerstone of national energy policy as enunciated in the pronouncements of Republican and Democratic presidents, and as enacted into law by, in particular, the Powerplant and Industrial Fuel Use Act of 1978 which virtually prohibited oil and gas use by utilities in new plants and required conversion of existing plants to coal. Together with the, perhaps temporary, demise of the nuclear option, this leaves coal as the only important source of incremental electric generation.

There are those who believe that there is little need for incremental electrical generation, but the statistics on the number of plants which have been approved for construction do not support them: by 1985, utilities expect to be consuming 450 million tons more coal than they were consuming in 1978, or a 95 percent increase, in plants which are, for the most part, already under construction. Coal expansion is already with us.

Montana and Wyoming, propelled into production initially by Western demand and Federal environmental and safety policies, have been thrust into market dominance over a much wider geographic area by the enormously increased requirements for all coal, which incidentally ensures that the Eastern coal states will not be crippled as the West develops. Whereas even in 1977, 10 percent of the U.S. coal supply came from these two states, 40 percent of the known incremental coal demand by 1987 will fall on their shoulders. Long term contracts have already been signed for over 100 million tons a year of additional coal from Montana and Wyoming, double the current level, and 68 utilities in 23 states expect to be purchasing Montana and Wyoming coal by 1987. This includes all but three states west of Chicago, and Michigan, Indiana, Ohio and New York to the East. So the projections of the crucial role of Montana and Wyoming are not the aberration of some DOE model: they are verified to 1985 by contracts and firm plans for supply to generating units under construction. By 1990, DOE's models project that 35 percent of U.S. coal will be mined in Montana and Wyoming. The recent World Coal Report from MIT also foresees substantial exports of U.S. coal to Western Europe and Japan, a factor not taken into account in the DOE projections, and one which will indirectly stimulate Western coal production.

This sudden turnaround in the outlook for coal has put Montana and Wyoming in a position to exploit the needs of the rest of the nation. As soon as the price of oil rose, given that coal production could not be immediately expanded, the price that coal could command, in a market where buyers were under some compulsion to secure alternative energy supplies, rose to a level which was above the cost of mining it. This increment of value is known to economists as an "economic rent": the excess of the market price over the cost of production. It is analagous to what are known in other contexts as "windfall profits." Montana's legislature was not slow to appreciate the potential. In 1975, it enacted legislation to place a 30 percent severance tax on its coal, remarking, in the legislation itself, that it believed there to be an economic rent of about one third of the price that the coal was commanding.

Effects of Montana's Tax

The net result of Montana's severance tax is like that of ordinary sales taxes: it is reducing production and raising prices. The Indians, furious that they cannot negotiate acceptable lease terms for their land, are suing Montana and meanwhile holding off leasing. Several mines which were planned in Montana have not been opened. Existing mines are running below capacity. In the five years following imposition of the Montana severance tax, there were only four new contracts signed, all for short term supplies, as against 15 long term contracts signed in the previous five years. Production showed a significant slowing against projections. Much of this lost production showed up in Wyoming, where production grew at a rate well in excess of earlier projections.

The tax has had another important result which is alarming: it has incited other western states--also rich in Federal coal--to raise their severance taxes. At the time that the Montana legislature passed the 30 percent tax, Wyoming's coal taxes were about 7 percent. They now total 17.5 percent and Governor Hirschler has twice attempted to add 5 more percentage points to Wyoming's tax. North Dakota's tax has grown steadily to an effective rate of about 20 percent. And New Mexico recently raised its coal severance tax for the third time in the last three years.

What limit is there to this process? Since very little of the tax falls on local citizens, we cannot expect the voters to throw out the legislature; the power of the voters is irrelevant where, as here, the taxpayers are not represented. Loss of production means loss of jobs and economic development, but some of the advocates of the tax had hoped to see this result anyway. If Montana mines are losing potential production, it is because there are competitors; if there are competitors, the producers have little market power individually. Yet even so, Montana as a tax collector has sufficient power in the coal market that it can continue to raise tax rates and increase tax revenue even while losing production.

This point is not always easy to see, so let me explain it: suppose the long term loss of production resulting from a 35 percent severance tax is 25 percent as compared with a 12 1/2 percent tax. Montana is still better off with 35 percent of 75 percent than it would be with 12 1/2 percent of the whole. It would be even better off with a 50 percent severance tax or a 60 percent severance tax. At some point, of course, a high level of tax becomes counterproductive to the state imposing it. If production shifts sufficiently, tax revenues may decline as the tax rate increases. Other states which do not have the same market dominance would find a much greater loss of production, and their maximum feasible tax revenues, if they acted alone, would be associated with a much lower tax rate. However, our estimate of the market power of the State of Montana _acting alone_ suggests that a tax of up to 100 percent could be levied before there was actually a reduction in tax revenues. What then limits the size of severance taxes? Not the voters and not, so far, the market.

Neighboring Wyoming, where the total _ad valorem_ tax is set at 17 1/2 percent, is currently welcoming new mines and tax revenues, and takes in about twice the absolute amount of tax as Montana. If it chooses to act in concert with Montana--and there have been several legislative proposals as well as approaches by the Montana legislature for a unified front--the two states together would in all probability have no limit, not even 100 percent, to the tax rate they could impose. There would be some shifts of production to regions where mining is more hazardous, more degrading to the environment and more expensive, but the legislature would still be able to increase its tax take virtually without limit. This is entirely due to the dominant position of the western states astride the coal supply. Other states, whose ability to raise severance taxes independently is limited, will be given a flexible and wide umbrella under which to raise their taxes, and the price of coal will be greatly increased.

Is the problem important enough for the Congress to worry about? After all, the tax does represent a small proportion of any individual consumer's utility bill. Of course, many worthy causes would be happy to be awarded a tiny fraction of the nation's utility bills, especially if it amounted in total to a quarter of a billion dollars a year. But there is a more direct and immediate Federal interest in this case. We stand poised at a new era of Federal coal leasing, where the rich coal lands of the West, owned by the people of the United States, are to be opened up to reduce our dependence on foreign oil supplies.

The Federal government has not stood still during its moratorium on Western coal leasing which has been virtually complete since 1971: it has passed a new Mineral Leasing

Act, 1976, providing for greatly increased federal royalty payments at 12 1/2 percent of value, of which half is immediately returned to the mining state, and has made provision for renewed competitive bidding for the leases, with payment of up-front lease bonuses, also split 50/50 with the states. There are those who would argue that the Federal government, representing the entire nation, is the proper claimant on behalf of the people of the U.S of any economic rent which arises from the OPEC action. In this case it was the ownership of the land, and not a windfall profits tax, which enabled the Federal government to claim a share of the windfall profits, and funnel them in ample proportions back to the states affected by the shift to coal.

Seventy-five percent of Montana's coal is federally owned. Seventeen federal leases are currently outstanding covering 1 percent of Montana coal and only six of them are being mined, presumably because the others are not economic for various reasons. The immediate impact of the Western severance taxes on the bidding process will be to reduce the up-front lease bonuses which will be bid for federal lands. As I have mentioned, half of this money goes back to the states where the coal is located anyway. The western states want to take all of it.

The second effect will be a rise in the price of coal since whatever rents the OPEC price rise induced have been claimed and claimed again. The incentive to other producers to raise their own taxes will add to the price rises. Energy costs to consumers will be higher.

Effects of the Proposed Legislation

The bill presently under consideration by this committee would limit taxes which can be levied by state and local governments on coal (or associated property, rights and assets) to a level of 13 percent. This is, as I will show presently, greatly in excess of the cost of services provided by the state. I would, however, like to trace through the existing sources of revenue which are covered by the limitation.

In 1976, the total state and local taxes paid by all the companies on 23 million tons of coal production were as follows:

	Million Dollars
Corporation License Tax (State Income Tax)	$ 0.03
Severance Tax	33.66
Resource Indemnity Trust Tax	0.47
Property Tax: equipment	0.72
gross proceeds	4.28
TOTAL	39.16

The state and local taxes in 1976, which would presumably be covered by this bill, amounted to 35.8 percent of value of the coal net of severance taxes. This explains the occasional confusion between Montana's 30 percent severance tax and 35 percent total coal-related tax. The comparable figures for Wyoming are 10 1/2 percent severance tax and 17 1/2 percent total coal-related tax. It is these percentages (35 and 17 1/2) which would be reduced by the proposed legislation to 13 percent.

In Montana, the local property tax is very complicated: the valuation, on which millage rates are levied, is set differently for different classes of property. Coal is valued for property tax purposes at 45 percent of its FOB price exclusive of severance taxes, which is multiplied by the millage rate set by the counties, school districts and other jurisdictions to give a local tax on coal which has in recent years yielded about 4 1/2 percent of the value of the coal. This 4 1/2 percent is used for general local purposes, not for "impact costs;" impact costs have been paid by that part of the state's 30 percent severance tax which has been set aside for local impacts.

The 4 1/2 percent property tax paid by coal companies has effectively reduced the taxes paid by others--the millage rates in the coal counties are among the lowest in Montana and there is substantial unused taxing capacity at the local level. In fact, in reviewing grants made from the severance tax, the Legislative Fiscal Analyst said, in a study done in September 1977, "Far from having a negative impact on the counties' abilities to meet financial requirements, coal development has mushroomed the tax base past the counties' financial needs. (Witness falling millage and rising valuations.) The result of the grants made from the severance tax has been a major tax break for the wealthiest area in the state."[1]

Since the State legislature has been financing "impact costs," we can get a rough idea of how large the legislature thinks the costs are by looking at the history of the impact allocations made from the severance tax. When the 30 percent tax was first passed in 1975, the legislature allocated 17.5 percent of the revenues (or an effective tax rate of 5 percent) to local impacts. In 1977, the Montana Office of the Legislative Fiscal Analyst issued a lengthy report, which concluded that the "need for state supported local impact grants may be much less than originally anticipated."[2] So the Legislature amended its original impact allocation to 13 percent (or a 4 percent tax rate). In 1978, the Coal Tax Oversight Committee--the group responsible for overseeing impact allocations--reported that the costs of local impacts had been met and foresaw greatly reduced need for additional funding. And so, beginning in 1980, the original allocation was cut in half: in other words, the Montana legislature feels that 2.5 percent of value--not 30 percent--is needed to cover impacts.

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[1] Memorandum from Robert J. Robinson, Associate Fiscal Analyst, Office of the Legislative Fiscal Analyst, to the Legislative Finance Committee, September 20, 1977, p. 11.

[2] State of Montana, Office of the Legislative Fiscal Analyst, memorandum prepared by Robert J. Robinson, entitled "Coal Impact and Coal Board Grants," September 20, 1977.

A limitation of 13 percent in state and local taxes together would leave Montana, at least, comfortably within the rates which are currently levied on coal for local property tax and for local impacts of coal development.

Other Coal-Related Revenues

There are many other sources of coal-related revenues. First there are the federal royalties on coal. In the future, the federal leases will pay royalties of 12 1/2 percent, of which half will be returned to the states. Six-and-a quarter percent of value is more than enough to cover impacts of mining on newly leased federal lands, a point conceded by Governor Judge in Congresional testimony. While the 12 1/2 percent federal royalties apply only to new leases or renegotiated leases, the much lower fixed rate royalties on old leases (at an average 16 cents per ton or 4 percent of value) brought in $690 thousand to Montana and $3.9 million to Wyoming in 1978. At this time about half the combined Montana and Wyoming production was on federal lands.

In addition, there are several federal programs under which coal-producing states receive substantial funds to cover environmental and social impacts. The Surface Mining Control and Reclamation Act of 1977 taxes all surface production at a rate of 35 cents per ton. Half of this is returned directly to the states to cover the costs of reclamation, or for social impacts if not needed for reclamation. Based on its production in 1979, Montana could expect to receive $5.7 million under this program. The Surface Mining Act also makes available an additional 20 percent through the Abandoned Mine Program. This would amount to an additional $2.3 million to Montana in 1979. Title VI of the Powerplant and Industrial Fuel Use Act is also designed to cover energy-related impacts. Montana received $286 thousand in 1979 from this source. Finally, Congress is presently considering another bill, the Energy Impact Assistance Act proposed by Senator Hart, which would make $150 million available to western states.

Under the three existing Federal programs, Montana received about $9 million in 1979 for environmental and social impacts. This amounts to about 30 cents per ton, which will increase greatly as federal leasing progresses.

Costs of Coal Development

Finally, I want to address in detail the estimates that NERA has developed with respect to the costs imposed on the state by coal development. The greatly increased production of coal will, of course, impose costs on the producing states. One may ask why the prospect of increasing population and economic development should be considered costs and not benefits: cities facing population declines and decreasing job opportunities, aging population and old capital stock would welcome the opportunities that new industries can bring. Indeed, the decline of Butte after the copper boom has been cited by opponents of this legislation as a cost, while at the same time they consider coal-induced growth as a cost. The fact is that new jobs generate new tax revenues, both to local and state governments. Depressed areas become productive. Unemployment goes down.

Representatives of both Montana and the utilities purchasing the coal have all agreed that Montana should be compensated by the users for any costs imposed on it by coal development. In fact, a "neutral principle" has been proposed for the appropriate level of taxation of items in interstate commerce: interstate commerce should stand on its own bottom and pay its own way. Voters may choose to tax themselves in one way or another. But when non-voters are being taxed, the taxes should be limited to the costs.

With this in mind, we sought in our studies to cast a wide net for legitimate costs. I will summarize the results and then explain them. We have quoted two cents a ton as an approximate estimate of the cost that coal mining imposes on the local governmental bodies of Montana in the peak year of impact for schools, hospitals, police, fire, sewage, recreation, welfare, libraries and general government. All other costs, including environmental costs to State government and others, add four cents per ton for a total of six cents. This amounts to 1 1/2 percent of the value of the coal, or a maximum of $3 million per year between now and 1985, or 3 percent of what is being levied.

The costs that could conceivably be borne by Montana governments are of two main types: the socio-economic costs of coping with an increased population incident on the development of coal mines, and environmental costs. These costs are examined separately below.

The principle of cost estimation for socio-economic impacts is relatively straightforward. Mines employ miners, some of whom will immigrate from outside the region. The miners increase the population and require increased local government services such as schools, sanitation, law enforcement, recreation, libraries, etc. The increase in primary employment also induces new secondary employment in service industries: these new secondary employees also increase the need for government services.

A county by county model of these effects has been developed by the Argonne National Laboratory for the Department of Energy. Entitled the Socio-Economic Assessment Model (SEAM), it permits estimates to be made of the impact on particular counties of various types and scales of energy development.

NERA was granted access to the SEAM model, and used it to project the cost to local governments of the coal development projected in Big Horn and Rosebud counties in the years to 1990. The results, however, can be stated as follows: an increase in output from the 1977 level of 26 million tons per year to a level of 75 million tons per year by 1983 (an increase of nearly 50 million tons per year) would induce new mine employment of about 1000 and new population of about 1500. Services for the new population in the two counties would cost about $1,000,000 (1975 dollars)[3] in the peak year, or about $660 per person, or about two cents per incremental ton of coal mined, or about 1/2 of 1 percent of the value of the coal.

If this figure seems unbelievably low, here are the main reasons for it: first, mining in Montana is extremely capital intensive. One miner can mine 40-50,000 tons of coal per year compared with the national average of 3,400 tons per miner per year. Hence, increases in population are small, and increased cost is very small when expressed as cost per ton of coal.

Second, the Argonne SEAM model takes account of existing unemployed population--it does not assume that all new employment will come from immigration. In Montana, for example, half the employment at one of the five mines is of Crow Indians who have limited employment opportunities on the reservation. The Argonne SEAM model "employs" these local people first.

Third, our estimates are of the peak year impact of coal mining, not the impact of conversion facilities such as electric generating plants or coal gasification facilities. Since we were studying the impacts of mining coal which would be shipped out of state, the impact of conversion facilities was not relevant. (This is discussed further below.)

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[3] Since the SEAM model was set up in 1975 dollars, comparisons with the value of coal are also made against the 1975 price of about $4 per ton: e.g., four cents per ton is 1 percent of value.

Fourth, we have assumed that the cost of constructing public facilities is amortized over 20 years at 8 percent annual interest rate. This and the assumption that only a portion of the new employees would be immigrants (the rest being available locally) lead to the two cents per ton figure. If these assumptions are changed, the Argonne SEAM model gives the following results:

(a) In the extreme (and unlikely) case in which all the population associated with coal mining (including secondary industry) move into the state, then the cost per ton could be five cents.

(b) If all the cost of constructing public facilities had to be borne in one year, then the cost per ton of coal in that year only would be eight cents, and one cent per ton for the following years.

(c) If all the population associated with coal mining in-migrates and the cost of constructing public facilities has to borne in one year then the cost per ton would be twenty-two cents for that year only, and three cents for every year after that.

There are, of course, caveats which should be noted: in particular, although local taxing capacity is, as I have explained earlier, quite sufficient to support increased local expenditures in total, there may be either jurisdictional or temporal mismatches of costs and revenues.

A jurisdictional mismatch means that while counties, school districts, local improvement districts and towns, all have taxing capabilities, a coal mine may be located in one school district, while the children of the employees of that mine go to school in another school district. In this case, interjurisdictional transfers would be required, but the total that could be levied is sufficient to pay for all the impacts. The School Equalization Fund is one mechanism the state of Montana has already set up to insure that interjurisdictional transfers are made. We estimate that approximately one-half of any impact on a school district would automatically be made up by the action of the Equalization Fund.

There may also be problems with intertemporal transfers. Impacts occur during the start-up phase of development, when local communities must suddenly provide services for new workers and their families while revenues flow only as the coal is mined. This is obviously a problem that should be met by bonding against future revenues. In Montana, the effect has been relatively unimportant: for the typical Montana mine, the construction period is roughly one year and requires about the same number of people for construction as for steady state production; coal gasification would require 50 percent more construction workers than would be required for production and would take four to seven years for construction; electric generating plants require nine or ten times as many workers for construction as for production, and construction takes four to seven years.

Krutilla,[4] whose published study of the revenue/cost balance for Montana confirms our findings that revenues from coal mining will more than cover costs, also estimated the socio-economic impacts in one case which included two 2600 mWe electric generating plants[5] and one 250-million-cubic-feet-per-day gasification plant. Although total expenditures were considerably greater under this scenario than when only mining is considered, the tax revenues generated to state and local governments would, he calculated, suffice to provide for public costs without the need for a severance tax.

The two cents a ton refers to local government expenditures. The major impacts of mining are local impacts resulting from large increases of population on a relatively small base, and these we have investigated carefully. What of State government expenditure because of coal mining? We have not tried to track down the impacts in detail but they are clearly small. The State reviews mining plans and prepares environmental impact statements, but charges the companies for these activities. It also employs mine inspectors (a dozen in 1978). If we assume that a total of 30 people were employed somewhere in State government at an average salary of $20,000 per annum to regulate coal development, this would amount to a further two cents per ton or 1/2 of 1 percent.

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[4] J. V. Krutilla and A. C. Fisher, Economic and Fiscal Impacts of Coal Development, Northern Great Plains, published for Resources for the Future by Johns Hopkins University Press, 1978.

[5] 5,200 mW of generation is postulated hypothetically by Krutilla. Two 750 mW plants are actually proposed for construction at Colstrip.

Where else should we look for costs to the State government? Clearly, the new population imposes some incremental costs on the State; at some time they will use the colleges, libraries, centers for the aged or hospitals which the State has constructed and which it maintains. The new population of course also pays personal income tax, liquor tax, cigarette tax, etc. and the mining companies pay the corporation license tax and the resource indemnity trust tax, and there is no reason to suppose that immigrants would not pay their way in this respect. But to fix the magnitude of the possible cost, the average State expenditure per capita in Montana is $585. This amounts to yet another two cents per ton or 1/2 of 1 percent.

The best, but still conservative, estimate is six cents per ton or 1 1/2 percent of value. If we take the maximum estimate for local costs (when all new employment immigrates) and the maximum for direct State costs and indirect State costs, it is hard to get to 10 cents per ton, or 2 1/2 percent of value. And all these costs can be offset by existing taxes.

Environmental Costs

We were well aware at the outset of this study that there might be environmental costs associated with mining--that either the State might have to make expenditures to repair damage, or that damage might remain unrepaired, imposing a real cost, if not a monetary cost, on the people of the State. However, after careful review of numerous (30-40) environmental impact statements and mining plans we have concluded that the laws, both Federal and State, governing Montana coal production, are so stringent as to make it virtually impossible to inflict any lasting environmental damage. The consumers of the coal are, as is right, paying the environmental costs in the price of the coal.

Thirty environmental laws must be complied with, and mining plans must be submitted and approved (they run up to 10 volumes) before mining begins. If any damage to the environment is suspected, mining plans are rejected. Ten state mine inspectors, all environmental scientists, visit the five mines at least every two weeks. Federal inspectors come quarterly. The mines are required to install weather stations with air-monitoring devices, stream gaging stations, observation wells to monitor water quality (actual monitoring is done by the Montana Bureau of Mines at the expense of the mining company) and soil is tested repeatedly by the U.S. Forest Service and Montana State University (again at the mining company's expense) before, during and after mining.

Reclamation costs $5000 per acre, or five to fifteen cents per ton, and must be performed by the mining company within two years after mining. Failure to do so would result in fines of up to $5000 per day and revocation of mining permits. In addition, the mining companies have to post bonds for the full costs of reclamation which are not released until the land has been reclaimed for 10 years. This provision virtually ensures that there will be no reclamation costs to the State. While it is true that no mine has yet been in operation long enough to have 10 years experience with reclamation, the reclamation that has been done so far looks lush and permanent.

I visited all the major Montana coal mines with a colleague, who had visited hundreds of mines in the past. He was almost shocked by the extent of environmental protection as compared to the average U.S. standard. For example, the mines are required to reclaim to native flora, even if alternative planting would be preferable: trees may be planted in reclamation which will immediately be pulled up when farming is resumed on the reclaimed land. (I believe this particular provision was sensibly rescinded just last month.)

A problem that is often raised in connection with coal development is the availability of water. Water is not actually used in the mining process, (although it is used in conversion facilities, which are not at issue here). Coal is however an aquifer or water-course, and if it is removed water has to run elsewhere; the water is not destroyed by the mining, but it may be diverted, which raises the possibility of drying up the wells of people downstream from the destroyed aquifer. This possibility is specifically addressed in the mining regulations which, in addition to pages of requirements for monitoring, protecting, and treating the water, state, "The permittee shall replace the water supply . . . which has been affected by contamination, diminution or interruption proximately resulting from surface coal mine operation by the permittee." This places the onus and the cost squarely on the mining companies, who, in fact, do drill deeper wells to the next aquifer for farmers whose well water is disturbed. Montana also employs a state geologist to ensure against potential calamities.

Therefore, although we have turned many stones in the search for environmental costs which might accrue to the State, we have been unable to find any of any significance. Here is the list of major environmental impacts projected for one of the mines, from the Final Environmental

Impact Statement which was, of course, drafted, commented on, subject to public hearings and revised:

> The terrain would be smoother than it was before mining.
>
> This would alter the types of plants growing on the land.
>
> The land may be more productive after reclamation than before mining began, when the lands were largely overgrazed.
>
> The ground water may be degraded; however, the impact of any change in surface or ground water quality on the Tongue River Reservoir would be negligible.
>
> Some species, such as the mule deer and sage grouse, may not return for a lengthy period of time.
>
> Unnoticed archaeological values would be destroyed.

But it may be argued, in spite of all these laws and protective measures, there will be some remaining damage. As a maximum limit we could estimate the value of the environmental costs in the extremely unlikely case that the land were entirely destroyed, and left as rubble and high walls forever. The land actually sells for $300 per acre as farm land but that underestimates its total value, since many people gain pleasure from being able to visit land they do not own. But, the coal areas of the Powder River Basin in Montana are, in fact, vast and sparsely inhabited: and are not considered prime lands for tourism or recreation. Montana is the fourth largest state in the union and has fewer than 1 million inhabitants in its 145,452 square miles. The coal counties had in 1975 some 19,000 inhabitants in 10,060 square miles or two people per square mile. The maximum land area currently being mined at any one time in the coal counties of Southeastern Montana is 640 acres or one square mile. Double or triple that to allow for land that has not been fully graded, topsoiled and seeded. Add 1000 acres per mine for loading facilities and access roads. About ten square miles are being used. Over the entire life of the existing mines the equivalent of an area five miles by five miles will be disturbed in an area where towns are 40 or 50 miles apart, where the only two north-south paved two-lane highways are 90 miles apart, and where you can drive for an hour without seeing a person, a building or even a cow.

Montana's National Forests and State Parks are not being assaulted: the coal lands are in remote and plentiful sage-brush territory. Hence, although we can readily admit that $300 per acre underestimates the full value in the event of total destruction, ten or even one hundred times that estimate would not result in more than thirty cents per ton of coal mined, in the almost impossible event of total destruction.

These facts lead us to the conclusion that Montana has so thoroughly regulated mining that the costs to the state of uncorrected environmental disturbances are effectively nil: consumers are paying to put things back as they found them. If this estimate is incorrect the foregoing analysis suggests that whatever other costs do in fact accrue will be de minimis. The long list of revenues and Federal contingency funds available to Montana to correct any such damage are vast by comparison.

Mr. Dingell. Thank you.

The Chair is going to recognize my friend and colleague, Mr. Gramm.

Mr. Gramm. Mr. Chairman, I will be brief, since I have to go vote.

I would like to first say to Ms. Howard, tell the people in Louisiana that help is on the way.

Second, I would like to ask each of you to do something that can have greater impact on your testimony here, and that is, write the members of your delegation and tell them your views, and outline to them the impacts on your State.

You have all been here, and you have seen what a master job these two States have done in confusing the issue. I will just give you one example which I think is a perfect case, and I admire them for their ability. We have had every Member from Montana who has testified here today question the constitutionality of imposing these limitations, yet the State of Montana, in its brief against Commonwealth Edison, says: "Well, a court is an inappropriate forum for determining the rate of a tax. A legislative body is fully capable of making such a determination."

In the context of the present controversy, it is the U.S. Congress that is charged with the explicit grant of the commerce clause power to "regulate commerce among the several States." So, I think that this is something that we can do, that we should do, and that we can do, with your help, in terms of letting people in your States know what is happening.

Thank you, Mr. Chairman.

Mr. Dingell. The Chair thanks the gentleman.

I have been analyzing with rather considerable interest the comments of Dr. Stelzer, and I find that you make two points, that in point of fact the total tax on coal removed in the State of Montana is not 30 percent, but in fact is 35 percent. Is that correct?

Mr. Stelzer. That is right, Mr. Chairman. There are a whole bunch of numbers that were thrown at you today, 22 percent, 30 percent, 35 percent. Partly it depends on whether you take out the royalties before you do the computations and so on. We get numbers, for instance, from invoices for our clients, Ms. Streiter tells me, of 28.5 percent in come cases, excluding these added taxes.

So, it is going to vary somewhat depending on the other royalty payments. Thirty percent is as good a number as you are going to get. It gets up to 34 when you include the other State taxes. If you look at exhibit 1, for example, to my testimony [see p. 296.], you will see that—well, I guess I can give you a better page to look at than that—but there is a list in the testimony of the three taxes that Montana charges. That is on page 16. And they have a gross proceeds tax and a resource indemnity tax, in addition to the severance tax.

Partly, it is definitial, when you say the severance tax, and then somebody comes back to you with a number like 30, and they say it is only 22.5 if you deduct royalties of 12.5 percent, which are deductible in the computation.

Mr. Dingell. Of course, the legislation says here that severance tax or fees are fine. So, all three then under that definition of taxes to which you alluded would then be severance taxes?

Mr. **Stelzer**. Under this bill, all those would count toward your ceiling of 12.5 percent, so what you would be ending up with, if you put a 12.5-percent tax ceiling on, would be capping what is now 35 percent at 12.5 percent, and giving the state revenues of 10 times our very careful estimate of the impact cost on them of producing coal in 1990.

Now, that is why I said I had trouble swallowing 12.5 as an economist, because my theory is, they should get back only the impact and environmental costs. This gives them 10 times that. I recognize that if you want to give them something to keep Texas happy, or Louisiana happy, because they have 12.5-percent severance taxes, I guess you have to do that.

Mr. **Dingell**. I think the severance tax down in Texas is 7 or 8 percent. The Louisiana and Texas severance taxes are around 7 or 8 percent, because I remember the highest was about 7.5 percent.

Mr. **Stelzer**. The total is 12, and I was off by half a point. In Louisiana the total is 12.

Mr. **Dingell**. Texas is 4.6 percent on oil and 7.5 on gas. Louisiana is 3.25 to 12.5 and 7.5 MCF on gas, the first figure on oil. On coal it is 10 cents a ton.

Mr. **Stelzer**. I was wrong. Louisiana has an aggregate of 12 percent when you take the user tax and the severance tax.

Mr. **Dingell**. Alaska is 12.3 on oil and 10 percent on gas.

Mr. **Stelzer**. First of all, I think you can make two arguments that they are not comparable.

Mr. **Dingell**. You commented on that on page 21, and I would like to direct your attention now to that, please.

Mr. **Stelzer**. OK. Those arguments, it seemed to me, are sort of silly. The people do not buy Btu's. They do not drop coal into their gas tanks and drive away because it has Btu's. As I say in the testimony, if you are going to tax on carbon content, you would put the same tax on diamonds and on coal, and I think we know some ladies who would know the difference.

It seems to me that what you have to look toward is what is the principle you are groping for. It seems to me that all the hollering I heard from the people of Montana and Wyoming say: "We want to be reimbursed for the social and economic impact costs of producing this stuff in our State," and I think that is absolutely correct. You have a bill here that will reimburse them 10 times over, and what they are saying is: "That is really not enough. We would like more than that."

It seems to me that somewhere somebody has to say: "No, that is too much," just like somebody is going to some day have to say to OPEC: "We are not going to stand for that. You do not want us to fill the strategic reserve, damn it, we are going to fill it, and if you do not like it, that is too bad."

Mr. **Dingell**. We are trying to say that right now.

Mr. **Stelzer**. I know. My impression, Mr. Chairman, has always been that if someone in another part of this town would be saying some of the things that you have been saying for a long time, we would be a lot better off. The trouble is that they will not, but that is more your problem than mine.

The fact of the matter is, if you are looking for an equitable economic touchstone, that has to be to reimburse the States for the cost. You have a bill here that does it over.

They raised an interesting question about future cost. How do we know what it is going to cost in the future? If you assume that after today the Government is going to be permanently paralyzed from addressing future problems ever, I guess then you should say we should have put a severance tax on automobiles leaving Michigan because some day the automobile industry might decline, and we want to have a fund to take care of that.

It seems to me that you cannot run a country that way. You have to accommodate change as change occurs.

So, my feeling is, you have a test. The test is not a comparison with Louisiana, the test is not a comparison with Texas, the test is a comparison with the cost in the States that are producing the stuff. Anything above that is just their desire to cash in on two things: OPEC and your own legislation, which gives them such a monopoly hold over the only usable fuel.

We cannot get nuclear off the ground. We cannot burn high-sulfur coal. We cannot burn oil. They are not going to let this lady burn gas. So they are sitting on the only thing anyone can burn, because you did it, and then they are saying, you do not have any power to stop them from charging anybody, because you handed them a terrific windfall.

I think that is just plain silly.

Mr. DINGELL. Maybe each of you could tell us, if you can, please, what this costs the average ratepayer in your State, either on a monthly payment or on a kilowatt hour.

Mr. VORBRICH. Mr. Chairman, we estimate about $4 a year in Iowa, and that is about 1 percent of the average electric bill.

Mr. BORER. I do not have that figure readily available.

Mr. DINGELL. If you can come up with it, please let us know. Commissioner?

Mr. PARSONS. I do not have a real accurate figure. I would like to provide that later, but I think it is somewhere in the neighborhood of $5.50 to $6 for the average residential consumer's bill, but I would like to provide that.

Mr. DINGELL. Ms. Howard?

Ms. HOWARD. We just have it stockpiled, and we are trying to get the generating unit on line now. We have about 1 million tons in storage, and we will be buying 6 million tons, so we have not computed it yet, but whatever it is, we do not mind paying our fair share, my consumers do not.

Right now, we have computed our severance taxes at present. Though, they keep saying 17 percent. We pay 20.5909, because we have 17.075 percent, plus an additional tax on a tax which we cannot figure out what it is, At least I do not know what it is, but our total severance taxes are over 20 percent to Wyoming.

Mr. DINGELL. Thank you.

Mr. Beaty, do you have a comment?

Mr. BEATY. We will have to supply a figure.

Mr. STELZER. Mr. Chairman, you should keep in mind that all projections are that Montana and Wyoming productions are going to skyrocket in the next 10 years, so the current level of payments is really a minor part of the tribute that will be paid over the decade. We tried to put it for each State in this map I have given you on exhibit 2 [see p. 298], how much it will come to in dollars by 1987 annually for each State. It comes to, all together, about $360 million a year by then.

So I think when you get the numbers, you ought to take the numbers for when you are really on line consuming that coal.

Ms. HOWARD. We have the first coal-fired unit in Louisiana, but two of the investor-owned utilities have them under construction right now, and are accepting delivery, really three, because the construction is beginning on the third one, but we have the first completed. So my figures of $12 million a year being paid to Wyoming right now is going to be drastically increased, because the investor-owned utilities have many more customers than we do.

We service about four customers per mile of line, and the rural and elderly that are least able to bear the burden, but the investor-owned utilities will have coal-fired plants, too. So Wyoming and Montana are going to reap a windfall from Louisiana.

Mr. BORER. Mr. Chairman, if I may add one comment, in my testimony I indicated that we will have three large coal-fired units by the mid-eighties in service. For one unit alone, which we have in service right now, we pay a little bit over $1 a ton for severance taxes within that coal price.

That one unit we burn 1.8 million tons per year, which, rounding that off, is something like $2 million for severance taxes to the State of Wyoming just for one unit; and last year, the Nebraska Public Power District's total revenues were $220 million, so we are almost talking 1 percent of our revenues which equal expenses at a public power district which were paid for severance taxes.

Thank you.

Mr. DINGELL. Thank you.

The Chair thanks you all for your assistance to us. We are very grateful to you. We express our appreciation to you.

Our next panel will be composed of the following: Mr. David Alberswerth, Western Organization of Resource Council; Mr. Robert F. McIntyre, director, Public Citizens Tax Reform Research Group; Mr. William Murphy, vice president, McLouth Steel Co., Detroit, Mich.; and Dorothy Bradley, national committeewoman, Montana Democratic Party.

We welcome you all. So, if you would each take your seat. Maybe we can start on your left, if you please, sir, and go across first so that you have each identified yourself for the record. After you have done so, then we will recognize you.

Mr. ALBERSWERTH. My name is David Alberswerth.

Mr. MCINTYRE. I am Robert McIntyre.

Ms. BRADLEY. I am Dorothy Bradley.

Mr. MURPHY. I am William Murphy.

Mr. DINGELL. Mr. Murphy, it is good to see you back again. We will recognize first Mr. Alberswerth.

STATEMENTS OF DAVID ALBERSWERTH, WASHINGTON REPRESENTATIVE, WESTERN ORGANIZATION OF RESOURCE COUNCILS; ROBERT S. McINTYRE, DIRECTOR, PUBLIC CITIZEN'S TAX REFORM RESEARCH GROUP; DOROTHY BRADLEY, NATIONAL COMMITTEEWOMAN, MONTANA DEMOCRATIC PARTY; AND WILLIAM V. MURPHY, VICE PRESIDENT, McLOUTH STEEL CORP.

Mr. **Alberswerth.** I wish to thank the subcommittee for giving me the opportunity to speak in oppcsition to H.R. 6625. My name is David Alberswerth. I am the Washington representative for the Western Organization of Resource Councils, which is a coalition of public interest organizations in the Northern Plains States consisting of the Dakota Resource Council of North Dakota, the Northern Plains Resource Council of Montana, and the Powder River Basin Resource Council of Wyoming.

The members of these three organizations are farmers, ranchers, and other residents of the region who are concerned about the impact of coal development on agriculture, the environment, and the region's rural communities.

The rationale which has been presented by proponents of H.R. 6625 to justify the measure seems basically to be twofold. The severance taxes on strip mined coal imposed by Montana and Wyoming are: (1) Burdensome on electric consumers; and (2) inimical to national goals of coal production. I believe that the evidence presented on behalf of Wyoming and Montana today conclusively shows that these charges are erroneous.

A tax that amounts to 1 percent or less of the average consumer's electric bill cannot be considered excessive. If the subcommittee is genuinely concerned about the effect of energy taxation policies on energy consumers, then we suggest that the subcommittee pursue Montana State Senator Tom Towe's suggestion that electricity sales be limited because such taxes represent a far greater burden on electric consumers than the coal severance taxes imposed by Montana and Wyoming on strip mined coal.

Also, it seems to me that the subcommittee might constructively turn its attention to the effects on electric consumers of Federal policies which permit utilities to collect Federal income taxes from their customers which are never actually paid to the Federal Treasury. Such phantom taxes are collected by the utilities from their customers, but because of allowances for accelerated depreciation and investment tax credits, are not paid to the Government.

According to a report released in April by the Environmental Action Foundation, in 1978 the Nation's 100 largest power companies charged their customers $3.54 billion for Federal income taxes, but actually paid only $797 million to the Federal Government. They kept $2.74 billion.

Some of the companies who are supporting H.R. 6625 are the biggest offenders. According to the report, Minnesota Power & Light, a plaintiff in the Montana coal tax suit and a proponent of the legislation before you, overcharged its customers $11,515,000 in phantom taxes in 1978. Likewise, Northern States Power, another plaintiff in the Montana suit and a sponsor of this legislation, charged its customers about $96 million for federal taxes, paid about $57 million resulting in an overcharge of over $38 million.

In 1978, Detroit Edison, a company which has appeared before this subcommittee on behalf of H.R. 6625, collected over $60.8 million from its customers to pay its Federal income taxes, but actually paid only $8 million, an overcharge to its customers of over $52 million.

Central Illinois Light, another utility which is upset with Montana's coal tax, collected for Federal income taxes from its customers $110 million, but paid approximately $33 million which resulted in an overcharge of $77 million.

Commonwealth Edison, a company whose senior vice president testified before this subcommittee in March in support of the measure, asserting that his company's concern for the serious impact of rising utility costs on its customers moved the company to do everything it could to minimize its charges, collects more money in phantom taxes from its customers than any other utility in the Nation.

In 1978, Commonwealth Edison collected over $176 million from its customers, ostensibly to pay its Federal income taxes, but actually paid only $19.9 million. This results in an overcharge of a whopping $156 million.

I submit that these amounts are not only large in total, but fall heavily on individual consumers, and have a far more significant impact on utility bills than the coal severance taxes at issue before the subcommittee. Here is a real problem. Yet, this bill does nothing to address it.

In fact, legislation has been introduced in recent years to deal with this problem, but has received little attention from Congress. Perhaps this is because the electric utility industry is uninterested in seeing such legislation enacted.

But it seems to me that if there is a sincere concern about energy related taxing policies and the impacts of such policies on consumers, the phantom tax problem is a better place to start than the proposal which you have before you today.

An omission from the bill is a limitation on oil and gas severance taxes. This should be puzzling to those who are sincerely concerned about energy mineral severance taxes. According to a report prepared by the New Jersey Governor's Office of Policy and Planning, the States of Texas and Louisiana received $1.4 billion in oil and gas severance taxes in 1978. The report projects that in 1985 these two States will receive $3.925 billion in oil and gas severance taxes. And, as evidence presented to this subcommittee by the State of Montana indicates, the taxes assessed by these States are often higher on a Btu basis than Montana's coal severance tax.

I have even heard proponents of a coal severance tax limitation refer to Alaska's high revenues from oil and the State's disbursement of those funds in per capita payments as reasons for why there should be a limitation on coal severance taxes in Montana and Wyoming. But in fact, limiting coal severance taxes in the manner advocated in this bill will have virtually no effect whatever on the cost of energy to consumers, while oil and gas taxes charged by the gulf States remain untouched.

As the New Jersey Office of Policy and Planning report asserts:

"New Jersey, and the northeast as a whole, will incur direct costs from western severance taxes through the natural gas and oil imported from western energy-producing states, and the States of Texas and Louisiana in particular. The severance taxes imposed by the Rocky Mountain States will not directly affect the Northeastern States, which import coal from eastern coal fields because of transportation costs and logistic barriers to the importation of low-sulfur western coal."

In the interests of equity, if the subcommittee is bound and determined to report a bill limiting coal severance taxes, then I suggest that this bill be amended to limit severance taxes on all energy minerals to 12.5 cents per million Btu's.

One last issue that I would like to address relates to the issue of the placement of some revenues from the coal severance taxes into trust funds. In Montana 50 percent of collections from the coal severance tax are placed in the constitutional trust fund, and the argument has been made that this proves that Montana's tax is excessive and has no relation to providing needed services in coal impacted communities.

It should be pointed out here that the State of Texas, which receives between 35 and 40 percent of all energy mineral severance taxes, has no corporate or personal income taxes. And, of course, the impacts of oil development are a lot less of a problem than coal stripmining and the attendant conversion facilities.

The concept of placing a portion of the coal tax revenues aside for the future when the coal is gone originated out of Montana's past experience with economies that are based on mineral extraction. Every Montanan who is familiar with the State's history knows the story of Butte, how Butte once prided itself as the "richest hill on Earth," and how the mining companies which dominated the State government in Butte's heyday saw to it that taxes on their activities were negligible.

All one has to do is go to Butte today and see the gigantic hole in the ground where the copper once was, and survey the burnt-out, run-down shell of a once-thriving city, which is now plagued by problems of unemployment and urban decay, to understand why Montanans are determined this time around to make the mining companies pay their way.

We do not want future generations of Montanans to be faced with numerous smaller Buttes in eastern Montana. Montanans are also well aware of the experience of the Appalachian coal producing States, where coal mining has run roughshod over the landscape and left broken economies in its wake.

So that portion of the coal tax that goes into the constitutional trust fund represents the asset depletion value of the nonrenewable resource. It is there so that when the coal is gone and the boom is over, Montana will have some monetary basis upon which to rebuild the economies of ruined communities. As such, the tax insures that the companies doing business in the State internalize their external cost of development.

It seems to me that in this time of budget consciousness on the part of Congress, and concern about the costs of various Federal programs, the Congress should be encouraging the individual States to develop innovative methods of dealing with problems such as those posed by the boom-bust economies of energy mineral development.

Instead, this bill seems designed to thwart such innovation, and if passed, will leave much resentment in its wake.

Thank you.

Mr. DINGELL. Thank you very much.

Mr. McIntyre?

STATEMENTS OF ROBERT S. McINTYRE

Mr. McIntyre. Thank you, Mr. Chairman.

I am here representing Public Citizen's Tax Reform Research Group, which is part of the Ralph Nader organization. We have been working since about 1972 on behalf of fair taxation at both the Federal and the State and local levels. That is our point of view. We have no interest in this legislation from a pecuniary point of view. We are just trying to help the Congress do the right thing.

Mr. Dingell. We try very hard to do that.

Mr. McIntyre. I know that.

I have a relatively long statement. I hope you have a chance to look at it. I just want to emphasize two points.

Mr. Dingell. Without objection, we will insert your full statement [see p. 363], and we will recognize you for such summary as you wish to make.

Mr. McIntyre. We are opposed to the bill to restrict the States' severance taxes, because we think that it will neither benefit consumers nor help the country's energy policy. We think largely what it will be is a boondoggle for the coal companies, and in the West that largely means the major oil companies. We do not think that they need this kind of help from the Government at this stage in their financial careers.

First of all, it should be made clear, and everyone should know, that when we talk about western coal, we are talking about the major oil companies to a large extent. They own probably about half of the private reserves in the western part of the United States, and they are rapidly expanding their production out there.

There is a chart in my testimony showing just how rapidly that is happening, based on their annual reports. [See p. 378.] So, I think it should be kept in mind that that is who we are talking about: the major oil companies.

The second point I want to make has to do with who pays the severance taxes. A lot of people have talked about Louisiana paying this much in severance taxes, and Michigan paying that much in severance taxes, and so on. These assertions are all based on the assumption that this tax is somehow passed on ultimately to consumers. I do not think that is true now, and I think it is even less likely to be true in the future.

Coal prices are going to go up very rapidly in the next decade, as oil and gas prices go up, and coal is substituted for those resources by utilities and industry. And as coals prices go up, the price is not going to be set by the cost of production. The price is going to be set as a derivative of what OPEC dictates the price of foreign oil to be.

At that point, when you impose a severance tax on the coal production, you are not changing the price. All you are doing is reducing the amount of profit that the coal companies, or the oil companies, get from the coal production. We think that that is entirely appropriate to reduce that profit, just as the Congress thought it was appropriate to enact a windfall profits tax.

The windfall profits tax is also not going to raise the price of oil in the United States, because that price is set by the exogenous variable, the OPEC foreign market price.

So, the point I want to make, and I think it ought to be kept in mind, is that we are not talking about a passed-on tax. We are talking about a question of very large profits in coal-mining over the next 10 years, and whether some of that profit should be shared with the citizens of the coal States, or whether it should all go to the energy producers.

Thank you.

[Testimony resumes on p. 371.]

[Mr. McIntyre's prepared statement follows:]

Public Citizen

Statement of
ROBERT S. McINTYRE
Director, Public Citizen's Tax Reform Research Group
Before the Subcommittee on Energy and Power
Of the House Committee on Interstate and Foreign Commerce
Concerning H.R. 6625 – A Bill To Limit State Severance Taxes on Coal
June 5, 1980

I appreciate the opportunity to appear before this Subcommittee concerning H.R. 6625, a bill which would sharply restrict the power of the states to tax coal companies. Public Citizen is strongly opposed to this piece of legislation, and we urge the Subcommittee to reject it.

In summary, we believe that this bill would neither benefit consumers, nor assist the nation in moving toward increased utilization of coal. Instead, it would be a boondoggle for coal producers – in particular, the many major oil companies which have invested heavily in the coal industry. And it would frustrate the efforts of the Western states to install and administer a sensible method of taxing coal, a system which requires coal producers to bear their fair share of the tax burden, helps cover the many social, economic, and environmental costs of coal extraction, and compensates future generations in the coal states for the depletion of the states' natural resource wealth.

The Outlook for Coal; Oil Company Involvement

Most observers expect U.S. coal use to surge dramatically in the 1980s. As a result, coal properties have become prime investments for the major oil firms. The Coal Data Book, published by the President's Coal Commission, reports that "now nearly every major oil company has bought or started a coal business." In fact, oil and gas companies own over 40 percent of the privately held coal reserves in the United States – primarily through their Western coal holdings.*

The rapid expansion of oil company coal investments has contributed to a temporary surplus of supply over demand for coal, and has kept coal prices relatively soft. But the oil companies are planning even more rapid expansion in the future, based upon the widely-held belief that coal demand will pick up substantially over the decade.

Occidental Petroleum, for example, notes in its 1979 annual report:

> "Mounting crude oil prices and uncertainty over supply are accelerating efforts to displace oil with coal for consumption in utility and industrial power plants. . . . In 1980 we expect steady growth in domestic steam coal demand despite the predicted recession."

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* The President's Commission on Coal, Coal Data Book 120, 122 (Feb. 1980).

Gulf suggests that "coal production will have to increase by more than 50 percent . . . by 1990," and says that it is developing its coal and other non-oil resources "as rapidly as current technology, economics, and markets will allow."

ARCO notes that "[t]ightening supplies and sharply rising prices of oil and natural gas during 1979 continued to stir worldwide interest in the development of substitute energy sources," and boasts that "ARCO Coal is moving closer to becoming one of the nation's largest producers of low-sulphur Western coal."

Sohio predicts that "[a]s the nation's most abundant energy resource, coal inevitably will become a key factor in future national energy programs. In recognition of this, Sohio . . . continued to add to its coal properties in 1979."

COAL PRODUCTION EXPANSION PLANS
BY MAJOR OIL COMPANIES

Company	*1979 Production (millions of tons)**	*Capacity Plans (millions of tons per year)*
Exxon	8.6	28 by 1984*
SoCal**	28.1	80 by 1985†
Gulf	10.0	22 by 1985†
Shell	3.2	21 by 1985†
ARCO	6.2	35 by mid-80s*
Conoco	47.2	90 by 1985†
Occidental	20	30 by end of 1980*
Sun	8	28 soon*
Ashland	18.2	23 by 1985†
Sohio	10.0	16 by 1985†

**Source: 1979 Annual Reports and Forms 10-K.*
*** Production of AMAX, Inc., of which SoCal owns 20%.*
†Source: U.S. Department of Energy, Energy Information Administration, An Analysis of Petroleum Company Investments in Non-Petroleum Energy Sources, Book I, Exhibit I–1 (October 1979).

As coal prices rise in sympathy with decontrolled oil prices, the profits on coal mining will also rise, largely to the benefit of the major oil producers. These profits are likely to be most dramatic in the case of Western coal, currently the big bargain in coal pricing. Ease of mining, abundant deposits, and low sulphur content make Western coal an attractive alternative to increasingly expensive oil and gas. Congress has approved large subsidies for coal conversion, coupled with laws and regulations requiring reduced use of oil and gas. In effect, a huge new market for coal is being created. At the same time, the coal producers –which in many cases are major oil companies – are waging a concerted battle to avoid paying state and local taxes wherever possible. H.R. 6625 is part of that campaign.

The Taxation of Coal: I. The Failure in the East

The taxation and regulation of coal production have long been controversial subjects, and the story of coal mining in the Eastern part of the United States has not been a happy one. Analysts have referred to the coal regions of Appalachia as "national sacrifice areas" – localities whose natural wealth has been exploited for the benefit of outsiders with little regard for the scarred, impoverished land and people left behind.

In the past, state and local governments in coal mining areas have been notoriously remiss in protecting their environments and recovering any significant portion of the coal riches for the benefit of their own citizens. In part, this is due to land ownership patterns which place economic control in the hands of large corporations located in places like New York, Chicago, or Los Angeles. But even more it has resulted from a system of taxation which works ineffectively if at all.

Coal may be taxed in several ways. The companies can be subjected to a corporate income tax on their earnings. They may also be required to pay a sales tax on all coal sold. But the two potentially most effective means for taxing coal and recovering some of the social, economic, and human costs which its extraction entails are the property tax and the severance tax.

An *ad valorem* property tax on coal should function much like the property tax on a person's residence. In both instances, the value of the land and improvements should be appraised by appropriate methods and the tax should be assessed against this value. In the case of coal (or any other mineral, for that matter), the land value should include the natural wealth which lies below the surface. (Where surface and mineral rights are held separately, each can be assessed as separate elements of real property.) Under most circumstances it is simple logic to assume that land which contains coal in place is worth more economically than land which does not.

Such tax logic, however, has rarely if ever existed in the coal fields. In central Appalachia, for instance, where property tax abuses have a long history, coal companies controlling huge shares of an area's mineral wealth have consistently shifted their tax responsibilities onto other, poorer elements in society.

The major abuses in coal property taxation in Appalachia stem from inaccurate appraisals. Even the most scrupulous and objective local assessor would have a difficult time figuring out how much coal reserves any one company owns in the county and how much such reserves would be worth in the market. Most do not even try. As one tax assessor in Knott County, Kentucky candidly admitted:

> "the coal companies pretty much set their own assessments. . . . We pretty much have to work with them. We have no system for finding out what they own. They might tell us they own 50 acres at a certain place, when actually they own 500 acres."

In Harlan County, Kentucky, for example, the results of such guesswork are readily apparent. There, the county property value administrator bases the assessment on information gathered solely from the coal companies themselves. The largest landowner in the county is U.S. Steel Corporation, headquartered in Pittsburgh. U.S. Steel owns more than 29,000 acres, or 10% of the privately owned land in the county. It is also Harlan's largest coal producer, mining over three million tons in 1975. At the time, that coal was worth at least $90 million, but the company property from which it was extracted was valued at little more than $6 million in 1976, including all the company's mining equipment. Thus, in a single year, 15 times the property's purported appraised value was mined in coal, while U.S. Steel's final tax bill amounted to a mere $57,000. Yet according to local assessing standards, U.S. Steel may actually have been "overcharged," since the second largest landowner in the county, the Kentenia Corporation, which owned some 23,000 acres, or 8% of the county, paid only $8,000 in property taxes, not even enough to buy one school bus.

Mingo County, West Virginia, suffers from a similarly atrocious track record when it comes to coal appraisals. There, prime coal land, which according to a manual provided to local assessors might be worth $3,000 to $4,000 per acre, was actually valued for tax purposes at an average of only $25 per acre, and in many instances substantially less. When the state tried to buy land from the Cotiga Development Corporation, the county's second largest landowner, the firm refused to sell, for anything less than $4,000 an acre, land that had been appraised for tax purposes at $36 per acre.

Needless to say, such appraisals result in impressive tax breaks for the coal companies and a tremendous shift in the overall property tax burden. Coal miners, farmers, and homeowners are expected to make up the lost revenues. Failing this, the burden is then further shifted onto the federal government and taxpayers in the form of relief granted to the Appalachian poor for housing, education, and health care.

Several states in the region, pressured by local citizen's groups, have made half-hearted attempts at reform. In 1971, Save Our Cumberland Mountains (SOCM) forced the Tennessee state government for the first time to assess and tax coal in place. Although several coal company appeals quickly ensued, the state is now undertaking the mapping of coal reserves and their valuation according to a set formula. So far, it has mapped only three of some fifteen coal counties in seven years. And to make matters worse, it has assigned only one person to accomplish this task, and even he often gets spirited off to "more important" work in the state assessor's office.

In 1976, the Kentucky legislature started onto the path of reform by passing a bill which levied a state tax of 31½ cents per $100 evaluation of coal in place. The assessments were made by three field staff and were no more than one-third complete when the legislature had a change of heart. It seems that the tax generated in the original bill went directly into the state treasury rather than being funneled back to the eastern coal counties where it was most needed. As a result, angry east Kentuckians joined forces with no less angry large mineral owners to pressure the statehouse to take action – which it did by turning the tax over to county assessors and reducing the rate to 1/10 of one cent per $100 valuation. In effect, it virtually wiped out any tax on unmined coal – a fact illustrated by the tax in place paid by the Harlan County Land Company on its 21,000 acres of coal. In 1977, it had paid the state over $9,000 in taxes; in 1979, it owed the county a total of $29.05.

West Virginia has also sought to reform its property tax on coal, with an equally unsuccessful effect. There, the state began a mapping and reappraisal program in 1971. Of the state's 44 coal counties, 23 were reappraised in 1977, only four in 1978, and none in 1979, which, cynics point out, happened to be an election year. In fact, the three largest coal producing counties in the state have remained untouched.

Moreover, the validity of the West Virginia valuation formula is open to question, as is the mapping itself. Since the state has done the mapping on the basis of a 1917 geological survey, it has seen fit to "caution" county assessors that much coal may have been mined in the intervening period and that they should allow coal companies to deduct a depletion allowance from their assessed valuation. Needless to say,the coal companies have driven more than one truck through this loophole. In Ohio County alone, two-thirds of the appraisals were deleted because the coal companies claimed that their reserves had been mined out. According to one tax reformer, if this rate of depletion were realistic, "in three years, West Virginia would be a virtual state park, devoid of any coal assets whatsoever."

The Taxation of Coal: II. The Western Alternative

The Western states are determined not to let what happened to Appalachia happen to them. Montana and Wyoming pioneered in strip mining and reclamation laws designed to preserve the environment. And the North Plains states have also worked to avoid the pitfalls of the Eastern experience by instituting a system of taxation which will force the coal producers to bear their share of the tax burden and which will recapture some of the coal wealth for the local population.

Due to the problems in valuing coal property, especially unmined reserves, for *ad valorem* tax assessments and the difficulties in penetrating the books of multi-state and multinational corporations to determine coal profits accurately for income tax purposes, many of the Western states have decided to rely primarily on severance taxes. In doing so, they have followed the lead of the oil and gas producing states, which have long relied on severance taxes for significant portions of their revenues.

Although the coal severance taxes imposed by the Great Plains states of Montana, Wyoming, and North Dakota might seem nominally high – at 30%, 10½%, and 20%, respectively* — by most measures they are actually either comparable to or substantially less than the severance taxes imposed on fossil fuel wealth by other producing states.

For example, some of the state severance taxes on oil per million BTUs (in 1977 and 1978, prior to decontrol of crude prices) were as follows:

Texas	8.84 cents†
Louisiana	16.63 cents
Oklahoma	12.58 cents
New Mexico	10.76 cents

These taxes are, of course, scheduled to go much higher as oil prices skyrocket. In comparison, Montana's 1979 coal severance tax was 9.97 cents per million BTUs, and those of Wyoming and North Dakota are less.

The oil states also collect a more significant share of their state revenues from severance taxes than do Montana, Wyoming, or North Dakota. In fiscal 1979, Montana's severance tax brought in $42 million, about 11.6% of total tax revenues in the state. In contrast, Texas' more than $1 billion in severance taxes in 1979 amounted to 19% of total tax collections; Louisiana's $495 million represented 29% of its tax revenues in 1977; and Alaska expects to fund almost its entire state budget from oil taxes and royalties by 1981.

Because of the relatively low price of Western coal, a seemingly high rate tax does not actually mean so much per ton of coal. In the last quarter of 1979, the severance tax in North Dakota yielded about 87 cents per ton; the 10½% Wyoming tax is expected to produce about the same amount per ton in 1980. In comparison, Kentucky's 4.5% severance tax produced $1.23 per ton in 1979, and West Virginia's 3.5% gross product tax yielded $1.04 per ton.

The severance tax represents the most administratively feasible way for the Western states to assess a fair share of the tax burden against coal producers, to cover the current costs to the state of coal production, and to compensate future generations for the depletion of the state's natural wealth. Given the significance of the taxing power to state sovereignity, proponents of federal interference with the Western states' choices about how to structure their tax systems have a heavy burden to show the overwhelming importance of such interference. In the case of H.R. 6625, that burden has not been met.

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* Apparently, North Dakota would not be immediately affected to any significant degree by H.R. 6525, since it ships hardly any coal in interstate commerce. (Its energy exports are primarily in the form of electricity.) Should this practice change, however, North Dakota could be affected.
Whether Wyoming would be affected by the bill is unclear. Its severance taxes total 10.5% — below the 12.5% limit in H.R. 6625. But, for administrative convenience, Wyoming assesses coal property for purposes of its general *ad valorem* property tax at a value equal to the gross worth of one year's production. Whether this *ad valorem* tax would be treated under H.R. 6625 as part of the state's general property tax, or as an additional severance tax is not apparent from the legislation. If it were treated as an additional severance tax, the total Wyoming rate would be at least 17%, and Wyoming would be adversely affected by H.R. 6625.

† Texas figure includes an *ad valorem* school tax of 2.28 cents per million BTUs.

The Fallacies in the Arguments for H.R. 6625

The proponents of H.R. 6625 come before this Subcommittee in the guise of consumer advocates. If Congress will just mandate a reduction in the taxes on coal producers (to a large extent major oil companies), they claim, the savings will be passed on in significantly lower electricity prices for consumers, and utility and industry conversion to coal will be faciliated. Analysis of these contentions shows that none of them can be supported.

First of all, it is not at all clear that the severance taxes on Western coal are passed on to utilities in current circumstances, and it is even less likely that they will be passed on in the future as coal prices go up in conjunction with increased oil and gas prices.

Economic theory teaches that excise taxes, such as severance taxes, may be passed on in competitive situations, in which buyers can choose among many sellers and prices are set by market forces. Thus, it might be expected that with the existing overcapacity in the coal industry, the price of coal would be controlled by the cost of production, and that, therefore, an increase in the cost of production in the form of a severance tax would be passed on. But many of the major producers of Western coal, in particular the oil companies, have been content to show little if any profit – and sometimes losses – on their operations in the short term, apparently to build markets for the future. These companies may thus be absorbing at least some of the severance tax even now. (Many of them, by the way, are protected for the future by long-term contracts which allow them the "market price" for future deliveries.)

In the longer run, the situation is less unclear. It is expected that increased demand for coal will push the price well above production costs. In fact, this is the reason that oil companies are investing so heavily in coal – they expect a high rate of return.[*] When the price of coal goes up toward BTU equivalence with oil and gas, it will then not be competively priced, but will be priced as a derivative of OPEC dictates. In these circumstances, the severance taxes will clearly not be passed on; they will merely reduce windfall coal profits – largely oil company profits.[†]

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[*] In response to a Department of Energy authorized survey, 7 of 11 oil companies showing substantial interest in coal investments stated that one reason was that coal investments were "more attractive" than alternative investments. (The remaining 4 companies said that the coal investments were about "the same" attractiveness as alternatives.) U.S. Department of Energy, Energy Information Administration, An Analysis of Petroleum Company Investments in Non-Petroleum Energy Sources, Book I, 18 (October 1979).

[†] The situation will then be analogous to that in the oil industry, where prices are set by the OPEC countries and the new federal windfall profits tax will merely reduce oil company profits – not raise the price of oil products to consumers.

The above analysis, we believe, substantially undercuts the argument that severance taxes on coal producers are somehow an undue burden on consumers. But even if the severance taxes were fully passed on, the conclusions reached by the proponents of H.R. 6625 would be invalid:

(a) Do consumers pay significantly more for electricity if severance taxes are passed on?

One diatribe in support of H.R. 6625[*] maintains that the Western states' severance taxes "threaten to have one of the most punishing effects on the American consumer since the enormous OPEC price increases in 1973-74." This is certainly an amazing claim.

Our current foreign oil bill is running at about $85 billion a year. The '73-74 price hikes alone raised that bill by some $30 billion. The severance taxes in Montana, Wyoming, and North Dakota totalled about $120 *million* in the last fiscal year, approximately 1/10 of one percent of the current OPEC bill, and 4/10 of one percent of the cost of the '73-74 increases. If *all* Western coal were subject to a 30% severance tax, the state revenues collected would be only about $300 million — 3/10 of one percent of our current OPEC bill.

Looked at as a percentage of electric utility bills, the Western coal severance taxes loom very small. About sixty percent of the delivered price of Western coal is transportation costs. Half the price of electricity relates to physical plant. When these and other costs are factored in, the cost of the Montana or Wyoming severance taxes ranges from less than ½ of one percent to 2 percent of electric bill for customers of utilities using coal from these states. This is less than the *sales* tax assessed by many consuming states on electricity customers.

(b) Assuming severance taxes are passed on, does this discourage utilities and industry from converting to coal, in contravention of our national energy policy?

The proponents of H.R. 6625 claim that severance taxes interfere with our national energy goal of converting to coal use, but their arguments are self-contradictory. Thus, on the one hand, they maintain that "these severance taxes . . . create a major obstacle to expanded coal production," but, on the other hand, they complain that "for industrial users, utilities, and their customers, there is no choice. . . . Federal law mandates that oil and gas consumption be reduced by switching to coal."[†]

In fact, there is absolutely no evidence that Western severance taxes have interferred with coal production or demand. Not a single one of the annual reports of the major oil companies involved in coal production mentions such a possibility (although these corporations are quick to criticize government regulation and taxation in other areas). And the demand for Western coal has continued to grow rapidly in spite of the enactment of severance taxes.

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[*] O'Connor & Hannan, *Materials Regarding Legislation to Limit Excessive State Severance Taxes on Coal, Statement in Support of Legislation to Promote Fair and Equitable State Taxation of Coal*, 1 (1980).

[†] O'Connor & Hannan, *supra*, The Legislative Case for Fair and Equitable State Severance Taxes on Coal, 1, 5.

Conclusion

Putting federal limitations on coal severance taxes would not reduce electric utility rates for consumers, nor would it speed the nation's conversion to increased coal use. But passage of H.R. 6625 would add to the profits of coal producers, largely the major oil companies. And it would frustrate the efforts of Western states to require the coal industry to bear its fair share of the tax burden, to cover the costs of coal production, and to recompense future generations for depletion of their natural resources. We urge the Subcommittee to reject this ill-advised interference with state taxing powers.

Mr. **Dingell**. Thank you.

Ms. Bradley, we will insert your full statement in the record [See p. 374.] and recognize you for such summary as you wish to give.

STATEMENT OF DOROTHY BRADLEY

Ms. **Bradley**. I will summarize my comments, Mr. Chairman. I want to thank you for your patience during this afternoon, and, again, like the others, I appreciate this opportunity to comment. I am a Democratic national committeewoman, and here testifying on behalf of the Montana Democratic Party in opposition to the legislation that would arbitrarily limit the State coal tax to 12.5 percent.

The Democratic Party was particularly eager to be represented here this afternoon, because it was the first organization in our State to debate and support the tax at that level, and I was particularly eager to represent them, because I was a cosponsor of that legislation, and I was chairman of the natural resources committee at the time of its passage.

I just want to emphasize that our motive was simply not to make a fast buck at our neighbor's expense. Like many others in this country, Montana has become more and more heavily dependent on coal energy, and like others, we pay the tax. I think Mr. Parsons said that they were moving in Wisconsin toward 55 percent dependency on coal, on Montana coal for their electricity. If I am not mistaken, in the near future, we will be something like 85 percent in the Montana power district area dependent on coal for electricty, and we are paying that same tax that everyone else is.

Rather, our motive was in that action, as many of our actions in the seventies, in response to this new and enormous pressure for a nonrenewable source heretofore of little national interest.

Montana has acted consistently in the seventies with deep concern for present citizens and for future generations.

In part, that came from our desire not to follow along the line of some of the poverty-stricken Appalachian coal areas that we have seen. In part, it came from, as has previously been stated, our desire not to repeat our past mistakes.

I happen to live in Butte at this time. I think Congressman Gramm was saying that it was a mistake to see the energy development taking place and then leaving a blight, but that is in fact what it has done to the city of Butte. The population is something now around a fourth of what it was in the not too distant past. If I am not mistaken, we have something like the highest mill levy of the major cities in the State.

The bulk of the money left over went to other worthy projects, such as the law school and the University of Virginia, but not very much of it stayed in Montana, and now we are heavily dependent on Federal money to try to make a transition to a broader kind of economic base. So, the people did establish a 50 percent trust fund, mostly because they have seen the unfairness of forcing today's citizens to pay for the costs of past economic exploits, and we do not want to perpetrate that kind of thing onto future generations.

I also want to emphasize the fact that the coal trust fund has spent in a variety of ways, some of which are very important to the entire Nation, one example being that we do have a renewable energy resource and development fund which will hopefully help us find ways to be less dependent on the Persian Gulf countries than we are now.

As has been stated, the coal tax has clearly not stifled coal development, nor did we intend it to. Production is up 39 percent since the passage of the tax. It is equally clear that the taxes have little significance when it comes to consumers' utility bills.

I think statements to that effect have been already given today.

I do not think it was stated that had Wisconsin Power & Light used all Montana coal instead of other coal sources that they used, they would have saved each residential consumer over $78 a year. Montana coal is not expensive, nor is it expensive with the tax.

It is clear that consumers everywhere are suffering from skyrocketing utility bills. It is a really serious problem, but the Montana coal tax is simply not the cause. The cause is that we are moving toward a more expensive resource, and the cause is the devastating transportation costs that we are experiencing today.

Those are the problems that I feel Congress should be debating.

We have listened to 4 hours of this this afternoon, and I expect there will be more, and yet it simply does not move us one step closer to solving the energy problems. Tax can be eliminated completely, and it is not going to help consumers, and it certainly will not help us in this debate, move it toward lower utility bills, and secure a higher percentage of renewable energy dependency in the country.

As we enter the eighties, this country must continue to maintain the delicate balance between State and Federal authority, allowing a maximum amount of initiative at both the State and individual levels. I believe that the Federal mandate of a 12.5 percent tax is tipping the balance very dangerously to excessive Federal authority.

So, on behalf of the Montana Democratic Party, I am here to ask for your trust rather than your skepticism regarding our State action.

In a very short period of time, we have been able to help small communities accommodate very large impacts. We have had to take action to insure future productivity of mined lands, and that is an experiment the results of which we do not even know yet. It is unknown. We do not know what is going to happen with our reclamation efforts in drought years. We do not know what is going to happen to a disruption of the ground water supply from the coal development.

Correction of those problems may take a great deal of money in the future, but we have done the best we could. I think we have accomplished a great deal. We have made government responsible in Montana.

So, I would just ask, who can best design programs to handle a very unique set of circumstances that takes place in each region? That is not regionalism. The people who live there are the ones that know those kinds of problems and understand them and can hopefully find solutions.

We carefully considered every detail of our action, and we debated it at great length. It is discouraging to see what appears to be a presumption of guilt when we have taken such pains to take care of ourselves and future citizens without putting a great burden on the Federal Government.

To penalize states such as ours in the actions they have taken is simply to encourage political irresponsibility, public apathy, and ultimately an unfortunate dependence on Uncle Sam.

Thank you.

[Ms. Bradley's prepared statement follows:]

Testimony of
DOROTHY BRADLEY, Democratic National Committeewoman,
on behalf of
THE MONTANA DEMOCRATIC PARTY

I am Dorothy Bradley, Montana Democratic National Committeewoman. I came to testify today on behalf of the Montana Democratic Party in opposition to proposed legislation which would arbitrarily limit state coal tax collections to 12.5%. The Democratic Party was particularly eager to be represented here today, since it was the first Montana organization to debate and support the 30% coal tax. I was particularly eager to make the presentation since I was a co-sponsor of the tax as a state representative, and chairman of the natural resources committee at the time of its passage.

Our motives in passage of that tax were not to make a fast buck at our neighbors' expense. Like others in the country, Montanans are becoming more dependent on coal energy, and like other consumers, we pay the coal tax.

Rather, the tax was one of many measures passed in the 70's in response to new and enormous pressures for a nonrenewable resource heretofore of little national interest. Montana has acted consistently with deep concern for its present citizens and for future generations. That concern is generated in part by our desire not to promote or allow human suffering and poverty of the magnitude we have seen in Appalachia coal states. In addition, Montana is eager not to repeat mistakes in its own past -- a period in which the state was exploited by mining interests who removed enormous amounts of wealth from the state, leaving little but the ruins of the Copper Kings' Mansion, and a shrunken boom town.

In an effort to halt that unfortunate economic tradition, the people of Montana established a coal trust fund in which 50% of the coal tax revenues are invested for the future. They have seen the unfairness of forcing today's citizens to pay the costs of the past economic exploits, and do not wish to perpetrate such unfairness on future Montanans. Equally important, the trust fund is an effort to maintain state objectivity with regard to coal development rather than allowing ourselves to become totally addicted and blinded by a new and welcome source of revenue. And finally, we simply recognized the common sense of making an investment with income that will not last in perpetuity.

The other coal tax revenues are carefully spent, some of them in ways which will clearly benefit the entire nation. Our alternative energy research and development program will help the United States in its effort to achieve greater energy independence, for example.

But the concern of the authors of the proposed legislation is understandably to ensure a stable supply of coal at a reasonable price for consumers.

Montana's coal tax has clearly not stifled coal development, nor did we intend it to. In fact, production has increased 39% since passage of the bill. This rate of increase is extraordinary in anyone's book -- particularly since demand for the coal was virtually nonexistent in 1970.

It is equally clear that Montana's coal tax is of little significance when it comes to consumers' utility bills. The annual burden of the tax rarely exceeds a cent a day. When a

St. Paul resident buys $1 of electricity, only 2 cents of that dollar goes to Montana's tax. On the other hand, 4 cents of that same dollar goes to pay the Minnesota sales tax -- TWICE THE AMOUNT OF THE SEVERANCE TAX.

Montana coal is not expensive coal, nor does the tax make it so. In 1979, the Wisconsin Power & Light paid an average of $1.25 per million Btu for coal. The delivered cost of Montana coal was $.87 per million Btu. Had the company substituted all Montana coal for all other coal, it would have saved each residential customer over $78.

It is clear that consumers everywhere are suffering from skyrocketing utility bills, but Montana's coal tax is not the cause. The cause is that we are using an expensive resource in greater proportion, and we are experiencing devastating transportation costs. Congress should be debating those difficult problems, and not scapegoating Montana.

As we enter the 1980's, this country must continue to provide the delicate balance between state and federal authority that allows for the maximum amount of individual initiative and freedom by both states and individuals. By federally mandating a 12.5% tax on coal, we feel the federal government would be tipping the balance dangerously toward excessive federal authority.

So on behalf of the Montana Democratic Party, I am here to ask for your trust rather than your skepticism regarding state action. In a very short period of time we had to help small communities accomodate big impacts; we had to take action to insure future productivity of mined lands, and we had to beef up state government to establish parameters for development, and to handle mining and reclamation plans. This we have accomplished. Who best knows the needs of the states? Who can best design programs to handle a unique set of circumstances? It is the people who live there. We carefully considered every detail of this action, and debated it at length. It is discouraging to see what appears to be a presumption of guilt, when we have taken such pains to take care of ourselves and our future without burdening the federal government. To penalize states for action such as ours is simply to encourage political irresponsibility, public apathy and dependency on Uncle Sam.

Mr. DINGELL. Thank you very much.

The Chair recognizes now Mr. Murphy.

STATEMENT OF WILLIAM V. MURPHY

Mr. MURPHY. Thank you, Mr. Chairman.

I appreciate the opportunity to appear here.

My name is Bill Murphy. I represent McLouth Steel Corp. I will read a short statement.

McLouth Steel is a fully integrated steel mill, currently the 11th largest U.S. steel company, with a capacity to produce 2.4 million tons annually. Annual sales in 1979 were $725 million, and we have 5,500 employees.

McLouth is a Michigan corporation with its three steel producing plants located in and around the Detroit area; the heart of the automotive industry, what is left of it. Our product line is low carbon deep drawing sheet steel, suitable for this market area.

The Detroit Edison Co., which services over half of Michigan's electricity consumption, is McLouth's sole electrical power source. McLouth is Edison's second largest single plant user of electrical energy.

The steel industry in general is very energy intensive and McLouth is no exception. Our dependency on coal in the form of coke for our blast furnaces or electrical power to run our mills is well known. Combined with iron ore it constitutes the life blood of our industry, but coal is our power source. And McLouth is only one of numerous steel companies who depend on electricity products from Montana and Wyoming coal, among them Northwestern Steel & Wire, North Star Steel, Republic Steel, United States Steel, Interlake, Inc., Lemont Manufacturing, and Calumet Steel.

McLouth uses coal produced electrical energy in three major areas. It drives the hundreds of motors necessary in the production of steel; it powers our two 200-ton electric furnaces, which convert automotive scrap back into steel; and it powers the world's largest induction heating furnaces, which are capable of heating 680 tons of steel slabs per hour.

These facilities draw a tremendous amount of electricity. In 1979, McLouth's electrical power cost was $36 million, and our consumption was 1.2 billion kwh, enough power to operate a city with a population of 200,000. To bring this cost into perspective, you must consider the fact that our direct hourly labor costs for all steel production during the same period were $78 million.

In 10 years our electrical power costs have gone from 0.88 cents to 3.3 cents per kwh. This 275 percent increase, which is due in large part to dramatic increases in Edison's fuel costs as well as the methodology used by the State of Michigan go apportion rate increases, far surpasses increases in our labor costs or steel price increases for that period. For that matter, electrical costs have increased at a greater rate than any of our key costs of production.

The added coal severance tax costs which we are addressing here today have severely impacted McLouth Steel, and will increase in severity with each year. Our projected costs of this severance tax to McLouth Steel over the 26-year life of our electricity supplier's contract for Montana coal is estimated at well over $30 million. This breaks down to average over $1 million a year for the life of the contract, and, sir, unless we see a complete reversal in domestic automotive sales during the next 6 months, we at McLouth aren't going to make anything near $1 million this year.

This tax is an unnecessary burden on our company at a time of depressed conditions unlike we have seen since we were founded. We have shut down one of our two blast furnaces and laid off over 1,500 employees, and the projection for the coming months does not look good.

This tax represents the type of unnecessary cost which impedes our company's ability to effectively compete in our marketplace with substitute materials for steel. It burdens our ability to compete with foreign steel producers, which have so severely invaded our markets. It also inhibits our ability to generate enough capital to modernize and expand our production facilities so we can create new jobs.

I am not here today in front of your subcommittee to protest a legitimate cost of doing business. I am here to request that reasonable commonsense guide our formation of an energy policy in all areas.

Energy policy is a national concern, and we cannot allow energy rich States to hold the rest of us hostage. We have had enough of that with OPEC. The State of Montana had a coal severance tax of 8 cents per ton as recently as 1973. Then, when the real impact of the energy crunch hit our Nation, Montana increased this tax to 30 percent of the market value of each ton of coal.

I might lift, if I might, a phrase from previous testimony. This is testimony from the president of Detroit Edison Co., and this is talking about the contract you were talking about earlier, sir. The contract in 1973 with Montana, at that point, the severance tax was 10 cents per ton. Today it is $2.54 a ton.

Coal represents 65 percent of our nation's fossil fuel reserves, and yet it is used to meet only 18 percent of our energy needs. We have a long way to go and we can't allow regional self-interest to impede our progress.

We therefore fully support the legislation proposed by Representatives Sharp and Devine.

Mr. DINGELL. Mr. Murphy, the subcommittee thanks you for your very helpful testimony.

We thank all of our panel for the patience. You have waited a long time, and we are appreciative of your patience in dealing with the subcommittee.

The Chair advises that we have the statement of Mr. C. Joseph Presley, the president of Westmoreland Resources, Inc., Billings, Mont., and some additional statements.

Without objection, those documents will be inserted in the record at the appropriate point.

The Chair thanks all of our witnesses for their assistance to the subcommittee.

The subcommittee is adjourned.

[The following statements were received for the record:]

Statement of C. Joseph Presley
President
Westmoreland Resources, Inc.
Billings, Montana

Concerning H.R. 6625 and H.R. 6654, Coal Severance Taxes

Submitted to the Subcommittee on
Energy and Power
of the
Committee on Interstate and Foreign Commerce
U.S. House of Representatives

This written statement is being submitted for the record by the President of Westmoreland Resources, Inc. ("Westmoreland") at the request of the subcommittee's staff, and briefly describes (1) the Environmental laws and regulations with which Westmoreland's Montana operations must comply [See p. 2]; (2) the treatment of Montana's severance tax under Westmoreland's coal sales agreements with its utility customers [See p. 14]; and (3) the potential for double severance taxation on coal mined from Indian lands [See p. 15].

Introduction

Westmoreland holds two coal leases from the Crow Tribe of Indians covering 30,876 acres within the Crow ceded area, which is a 1.1 million acre strip of land immediately north of the Crow Indian Reservation in Montana. In 1972 Westmoreland received its leases from the Crow Tribe (which owns the coal) and began construction of its mine. It received its first mining permits and commenced initial coal production in 1974.

Westmoreland is currently producing low sulfur coal at the rate of 5.0 million tons per year. The Power companies currently receiving coal from Westmoreland's Absaloka mine are as follows:

Company		Location
Northern States Power Co.	--	Minnesota
Central Illinois Light Co.	--	Illinois
Dairyland Power Cooperative	--	Wisconsin
Interstate Power Company	--	Iowa and Minnesota
Wisconsin Power & Light Co.	--	Wisconsin
Upper Peninsula Generating Co.	--	Michigan

I. Environmental Regulation of Montana Coal Mining Operations.

The Absaloka mine is an "area" surface mine in which a dragline makes a series of long, narrow pits, placing overburden from each succeeding pit into the previous pit, from which the coal has been removed. Like all such mining operations, Westmoreland's Absaloka mine is tightly regulated to reduce environmental impacts as much as possible during mining, and to require reclamation of the mined lands after mining has been completed. Westmoreland must obtain Federal and State mining permits and comply with all Federal and State legal requirements pertaining to surface coal mining in Montana, including the Surface Mining

Control and Reclamation Act of 1977, the Montana Strip and Underground Mine Reclamation Act, the Federal and Montana Clean Air and Clean Water Acts, and the Federal and State regulations adopted pursuant to each of those statutes. In addition, the Crow Indian mining leases themselves contain provisions requiring mitigation of most environmental impacts from mining.

Westmoreland has always operated under mining and environmental standards which are among the most stringent in the nation. Recent amendments to those laws have further tightened the standards its operations must meet. The single recent mining law which is of primary importance to regulating the environmental impacts of Westmoreland's coal mining operations in Montana is the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, 30 U.S.C. §1201, et seq. (SMCRA). SMCRA was passed by Congress in August of 1977, some three years after Westmoreland's mining operations had commenced. It established uniform minimum Federal standards for regulating surface mining and reclamation activities on Federal, State, private and Indian lands, and for assuring adequate protection from the environmental impacts of surface mining in all States. States such as Montana were expected to assume primary responsibility for regulating coal mining under the Act, and Montana has done so through submission of a State Regulatory program of laws and regulations which has been approved as satisfying the SMCRA requirements by the Secretary of the Interior.[*]

Westmoreland was required to meet SMCRA's initial environmental protection performance standards by December 16, 1977, which was the date such standards became effective for "Indian lands" as SMCRA defined them. These standards generally covered restoration of mined lands to pre-mining or better land uses; regrading to approximate original contour; topsoil handling methods; avoiding adverse hydrological impacts of mining; and revegetation methods. The recent approval of Montana's state regulatory program by the Secretary of the Interior under SMCRA will require Westmoreland to meet numerous additional requirements in the near future. It will be required to "re-permit" its operation under the standards of SMCRA and Montana's new program in order to assure that all these requirements will be met.

The initial environmental protection performance standards imposed by SMCRA, which Westmoreland was required to meet beginning in 1977, are summarized as follows:*

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[*] SMCRA contains special provisions for the regulation of mining operations on "Indian Lands," which it defines to include all Indian-owned coal both inside and outside Indian reservations. Montana currently takes the position as the primary regulatory authority within the State that all of its state mining and environmental laws and permit requirements are applicable to Westmoreland's operations. The Federal government also takes the position that all of its mining and environmental laws and permit requirements apply to the mine pursuant to SMCRA and the Crow Tribe-Westmoreland leases.

- restoring affected land to a condition capable of supporting uses which it was capable of supporting prior to any mining or higher and better uses of which there is reasonable likelihood [§505(b)(2); 30 U.S.C. §1265(b)(2)];
- except for mountaintop mining, and operations with thick or thin overburden, backfilling, compacting (where advisable for stability or to prevent leaching) and grading to restore the approximate original contour of the land with all high walls, spoil piles and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation) [§515(b)(3); U.S.C. §1265(b)(3)];
- removing topsoil (or any other suitable stratum for vegetation) in a separate layer and replacing it on the backfill area if used immediately, or segregating and protecting it in a stockpile for later use [§515(b)(3); 30 U.S.C. §1265(b)(5)];
- minimizing disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface mining operations and during reclamation through
    - avoiding or treating acid or other toxic mine drainage;
    - using best technology currently available to meet water quality requirements and to prevent additional contributions of suspended solids to streamflow and runoff outside the permit area, including building siltation structures approved in a reclamation plan prior to commencement of mining;
    - cleaning out and removing silt and debris from setting ponds and other siltation structures and drainage ways and properly depositing silt and debris at an approved site and in an approved manner;

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*/ Citations in brackets are to SMCRA and the U.S. Code.

  - restoring recharge capacity of the mined area to approximate pre-mining conditions;
  - avoiding channel deepening or enlargement when discharging water; and
  - preserving throughout the mining and reclamation process the "essential hydrologic functions of alluvial valley floors in the arid and semiarid regions of the country", and
  - such other measures as the regulatory authority may prescribe. [§515(b)(10); 30 U.S.C. §1265(b)(10)].

- designing, locating, constructing, operating, maintaining, enlarging, modifying, removing and abandoning all existing and new liquid and solid coal mine waste piles used as dams or embankments under standards promulgated by the Secretary of the Interior with the concurrence of the Chief of Engineers. [§515(b)(13); 30 U.S.C. §1265(b)(13)].

- using explosives only in accordance with State and Federal law and regulations, and providing advance written notice to local governments and residents who might be affected through publication of a proposed blasting schedule in a local newspaper, mailing the schedule to every resident living within one-half mile of the blasting site, and by providing daily notice to residents and occupants in such areas prior to blasting; maintaining blasting logs for three years; limiting the size, types and frequency of blasts to prevent injuries and damage; requiring blasting operations to be conducted by persons State-certified to be trained and competent; and conducting pre-blasting surveys of man-made structures or dwellings within one-half mile of the permit area upon the request of a resident owner [§515(b)(15) 30 U.S.C. §1265(b)(5)].

- establishing a diverse, effective and permanent vegetative cover of native species equivalent to natural vegetation in cover, self-regeneration and plant succession on regraded areas and other lands affected by the mining operation (except that introduced species may be used where desirable and necessary for the proposed post-mining land use, and the regulatory authority may permit long-term intensive agriculture as a post-mining land use) [§515(b)(19); 30 U.S.C. §1265(b)(19)]; and

- on steep slope mining (generally above 20 degrees, and not where an occasional steep slope is encountered in mining on flat or gently rolling terrain) placing no materials on the downslope below the bench or mining cut, covering the high wall completely, and not disturbing land above the high wall except to the extent required for returning the land to approximate original contour and a stable condition [§515(d); 30 U.S.C. §1265(d)].

The additional environmental protection performance standards which Westmoreland must show it can meet in order to continue mining coal under the Montana permanent regulatory program will require, at a minimum:

- conducting surface coal mining operations to maximize recovery so that reaffectng the lands in the future can be minimized [§515(b)(1); 30 U.S.C. §1265(b)(1)];
- stabilizing and protecting all affected surface areas including spoil sites to effectively control erosion and attendant air and water pollution [§515(b)(4); 30 U.S.C. §1265(b)(4)];
- restoring the topsoil or the best available subsoil which is best able to support vegetation [§515(b)(6); 30 U.S.C. §1265(b)(6)];
- complying with soil removal, storage, replacement and reconstruction standards for identified "prime farm lands" as established by the Secretary of Agriculture, which at a minimum must require separate removal and replacement of both the A topsoil and the B or C subsoil layers [§515(b)(7); 30 U.S.C. §1265(b)(7)];

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- that permanent water impoundments be left as part of reclamation only where authorized in the permit, on the basis that the size of the impoundment will be adequate for the intended purpose, it will be properly constructed, water quality will be suitable; water quantity will be reasonably stable; there will be reasonable and safe access for users after final grading, and the impoundment will not diminish the quality or quantity of water used by adjacent or surrounding landowners [§515(b)(8); 30 U.S.C. §1265(b)(8)];

- that augering operations be conducted to maximize recovery of remaining coal, with auger holes sealed off to prevent drainage (unless the water impoundment would be hazardous to the public or the environment) [augering may be prohibited, however, if necessary to maximize coal recovery or protect water quality] [§515(b)(9); 30 U.S.C. §1265(b)(9)];

- stabilizing all mine wastes, tailings, coal processing wates and other wates not disposed of in mine workings or excavations by construction in compacted layers (using incombustible and impervious materials if necessary), with a final contour compatible with natural surroundings, stable, and able to be revegetated [§515(b)(11); 30 U.S.C. §1265(b)(11)];

- no mining within 500 feet from active and abandoned underground mines in order to prevent breakthroughs and protect miners (unless specially permitted as safe, and resulting in improved coal recovery, abatement of water pollution or elimination of health and safety hazards); [§515(b)(12); 30 U.S.C. §1265(b)(12)];

- insuring that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated and buried or compacted or otherwise disposed of to prevent water contamination, with contigency plans to prevent sustained combustion [§515(b)(14); 30 U.S.C. §1265(b)(14)];

- insuring that reclamation efforts are "environmentally sound" and proceed "as contemporaneously as practicable" with surface coal mining operations (although variances to the contemporaneous reclamation requirements are available for combined surface and underground mining operations to permit underground mining prior to reclamation) [§515(b)(16); 30 U.S.C. §1265(b)(16)]

- insuring that the construction, maintenance and postmining conditions of access roads into and across the operations will minimize or prevent erosion and siltation, water pollution, harm to fish and wildlife, and harm to public or private property [§515(b)(17); 30 U.S.C. §1265(b)(17)];

- no construction of roads or access ways to stream beds or drainage channels, or so near to them to seriously alter normal water flow [§515(b)(18); 30 U.S.C. §1265(b)(18)];

- assuming responsibility for revegetation success for 5 full years after the last year of augmented seeding, fertilization, irrigation or other revegetation work, and for 10 full years where the average annual precipitation is less than 26 inches (the 5 and 10 year periods run from the year of initial planting where the approved postmining land use is long-term intensive agriculture) [§515(b)(2)); 30 U.S.C. §1265(b)(20)];

- placing excess spoil by: providing a design for the spoil disposal area which is certified by a qualified registered professional engineer in conformance with professional standards; transporting spoil in a controlled manner to a position for concurrent compaction which will assure mass stability and prevent mass movement; removing all organic matter immediately prior to spoil placement; using surface and internal drainage systems and diversion ditches to prevent spoil erosion and movement; assuring the disposal area has no springs, natural drainage courses or wet weather seeps unless lateral drains are constructed from wet areas to main underdrains to prevent infiltration of water into the spoil site; if placing the spoil on a slope, selecting the most moderate slope available in the judgment of the regulatory authority with spoil placement if possible on or above a natural terrace, bench or berm if that provides additonal stability and prevents mass movement where the toe of the spoil rests on a down slope; and achieving a final configuration compatible with the natural drainage pattern and surroundings and suitable for intended uses [§515(b)(22); 30 U.S.C. §1265(b)(22)];

- meeting other criteria necessary to achieve reclamation as required by the Act, taking into account the physical, climatological, and other characteristics of the site [§515(b)(23); 30 U.S.C. §1265(b)(23)];
- minimizing disturbances and adverse impacts of the operation on fish, wildlife and related environmental values "to the extent possible using best technology currently available," and enhancing such values where practicable [§516(b)(24); 30 U.S.C. §1265(b)(24)]; and
- providing for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the regulatory authority shall determine as a barrier to slides and erosion [§516(b)(25); 30 U.S.C. §1265(b)(25)];

Westmoreland must demonstrate its ability to comply successfully with all of the foregoing environmental protection performance standards if it is to continue its mining operations under Montana's permanent regulatory program. In order to do so it must prepare and submit an additional extremely detailed permit application to the Montana Department of State Lands. The permit application must contain the information summarized below at a minimum (most of which Montana previously required). The permit may not be issued without notice and an opportunity for public comment and a hearing if requested. The required information is as follows:

- detailed information about the applicant and the operator if it is a different person; the record surface and mineral ownership of, and leasehold interests in, the property to be mined and adjacent properties and the nature of the existing or proposed mining operation and of other current or previous mining permits held by the permittee. [§507(b)(1)-(4); 30 U.S.C. §1257(b)(1)-(4)];
- a statement whether the applicant or others controlled by or under common control with it has had a mining permit suspended or revoked or a mining bond forfeited within the last 5 years, with a brief explanation of the facts [§507(b)(5); 30 U.S.C. §1257(b)(5)];
- a copy of an advertisement published for four weeks in a local newspaper giving notice of the location of the mining operation and of where the application is available for public inspection [§507(b)(6); 30 U.S.C. §1257(b)(6)];
- a description of the existing or proposed type and method of operation, engineering techniques and equipment [§507(b)(7); 30 U.S.C. §1257(b)(7)];
- the anticipated or actual starting and terminating dates of each phase of the operation and number of acres of land to be affected [§507(b)(8); 30 U.S.C. §1257(b)(8)];
- a map showing the area of land affected as of the date of the application, the area of land upon which the applicant has the legal right to enter and mine, and a statment of the documents on which the right to mine is based on whether the right to mine is the subject of litigation [§507(b)(9); 30 U.S.C. §1257(b)(9)];
- the name of the watershed and location of the surface streams or tributary into whch surface or pit drainage will be discharged [§507(b)(10); 30 U.S.C. §1257(b)(10)];
- a "determination of the probable hydrologic consequences" of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground

water systems including the dissolved and suspended solids under seasonal flow conditions and "the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability" (emphasis added). The regulatory authority is not required to make this determination of impacts "until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency," but the permit shall not be approved until such information is available and is incorporated into the application. (emphasis added) [§507(b)(11); 30 U.S.C. §1257(b)(11)];

- If the regulatory authority requests, climatological factors peculiar to the locality of the land to be affected, including average seasonal precipitation, average direction and velocity of prevailing winds, and seasonal temperature ranges [§507(b)(12); 30 U.S.C. §1257(b)(12)]; and
- maps showing all lands to be affected as of the date of the application, and all topographical information set forth on USGS maps, including all manmade features and significant known archeological sites on the permit area, the boundary lines and names of surface owners abutting the permit area, the location of all holdings within 100 feet of the permit area, and other items specified by the regulatory authority [§597(b)(13); 30 U.S.C. §1257(b)(13)];
- cross section maps or plans of the area to be affected including the actual area to be mined (prepared by or under the direction of a qualified professional engineer or professional geologist) showing the pertinent elevation and location of test borings and core samplings with the following information depicted:
    - nature and depth of overburden stratum; location depth and quality of subsurace water, if encountered; nature and thickness of any coal or rider seam

above the coal to be mined; nature of the stratum immediately below the coal seam to be mined; mineral crop lines and strike of the coal to be mined within the permit area; existing or previous surface mining limits; location and extent of known underground mines; location of acquifers; estimated water table elevation; location of spoil waste or refuse areas and topsoil preservation areas; location of all impoundments for waste or erosion control; any settling of water treatment facility; constructed or natural drainage ways; discharge locations; and profiles of anticipated final surface configurations pursuant to the proposed reclamation plan [§507(b)(14); 30 U.S.C. §1257(14)];

- a statement of the results of test borings or core samplings including drill hole logs; thickness and chemical properties of the coal; chemcial analysis of potentially toxic or acid forming overburden sections, and of the stratum immediately below the coal to be mined [§507(b)(15)];
- if a reconnaissance inspection suggests lands in the permit are or may be prime farmlands, a soil survey must be made or obtained which meets standards established by the Secretary of Agriculture in order to confirm the exact location of such lands, if any. [§507(b); 30 U.S.C. §1257(b)].

Enforcement

The foregoing Federal and State environmental requirements are enforced at the Absaloka mine through regular inspections by the Montana Department of State

Lands and the Federal Office of Surface Mining.*/ Both of these agencies monitor, inspect and enforce mining plan tems and conditions for reducing the effects of mining and achieving proper reclamation. Westmoreland is required to monitor the environmental effects of its operations and to report the results of its monitoring to State and Federal agencies. Both also have authority to issue notices of violation and to assess civil penalties to Westmoreland for any violations of State or Federal laws or regulations. Both the State of Montana and the Federal Government require Westmoreland to furnish bonds to insure the completion of necessary reclamation work in compliance with applicable statutes, regulations and permit conditions.

II. Operation of Coal Sales Agreements

Westmoreland's long-term coal sales contracts obligate its customers to purchase coal from the Absaloka mine. Its agreements with Dairyland Power Cooperative, Interstate Power, Northern States Power and Wisconsin Power & Light are dated June 15, 1972. Its agreement with Central

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*/ Under a recently-executed Memorandum of Understanding the Office of Surface Mining has responsibility to be the Federal point of contact for and to coordinate communications with Westmoreland on Federal mine plan development, review and approval (including National Environmental Policy Act Compliance). The Bureau of Indian Affairs and Geological Survey, respectively, discharge the Interior Department's trust responsibility to Indian mineral owners and deal with Westmoreland on issues concerned with coal production, conservation and recovery requirements.

Illinois Light, as amended from time to time, has been in effect since January 1, 1975. Its agreement with Upper Penninsula is dated January 1, 1977. Pursuant to these agreements Westmoreland's utility customers are obligated to reimburse Westmoreland for State severance tax payments made by Westmoreland on coal produced from the Absaloka mine. The ultimate burden of the State severance tax therefore falls upon Westmoreland's utility customers.

III. Westmoreland's Potential Exposure to Double Taxation

As indicated above, Westmoreland is mining "ceded strip" coal owned by the Crow Tribe of Indians, and is thus operating on "Indian" lands outside of the exterior boundaries of the Crow Tribe's reservation. Montana imposes its 30% coal severance tax on all coal mined from all lands within the state including "Indian" lands, and Westmoreland currently pays that tax "subject to protest" at the direction of its utility customers. It is a party to the Montana State court litigation challenging the constitutionality of the State Severance Tax.

The Crow Tribe has also passed a 25% severance tax ordinance of its own, which purports to apply to the mining of all coal owned by the Tribe, and not just to coal mined within the boundaries of the Tribe's reservation. This Tribal tax ordinance has not yet been approved by the

Secretary of the Interior, pending the resolution of certain litigation between the Tribe and the State, but Westmoreland is still potentially subject to this Tribal severance tax as well as to the State Severance Tax.

Westmoreland faces a potentially serious "double taxation" problem because the State severance tax provides no credit for any severance taxes paid to an Indian Tribe, and the Tribal Severance tax provides no credit for severance taxes paid to the State. Each jurisdiction would thus impose its severance tax on the "value" of the coal, defined so as to include the severance tax of the other. This would cause the severance taxes to be imposed on one another in a mathematical progression, the combined results of which would be to raise the actual cost of the coal to Westmoreland's utility customers by approximately 34% over what they already pay. The effect of these taxes on percentage royalties payable to the Tribe would also add to the extra burden. Westmoreland calculates that if this type of double taxation is imposed on the coal it mines it will be less costly for its utility customers to cancel all coal deliveries, pay Westmoreland a penalty under the "take or pay" provisions of their contracts, and obtain coal elsewhere than to continue receiving coal from the Absaloka mine.

Westmoreland has not yet been subjected to any Tribal claims for double taxation because there is a dispute pending in court between the Crow Tribe and the

State of Montana. The tribe claims the exclusive right to impose a severance tax on the Westmoreland mining operation, and seeks to have the State tax declared invalid as applied to the Tribe's coal. The U.S. District Court for the District of Montana has dismissed the Tribe's complaint, and indicated that Indian ownership of the coal is no bar to imposition of the State's severance tax on non-Indian operations. Double taxation of Westmoreland is thus a distinct possibility under the District Court's view of the law. The case is presently pending on Appeal in the Ninth circuit.

Westmoreland's position on this double taxation issue is that it should not be subjected to any severance taxes which, in the aggregate, are higher than those imposed on any other coal producer in the State. Such taxes would impose a severe competitive burden on Westmoreland and might result in a cessation of its operations. Westmoreland therefore suggests that an amendment to H.R. 6625 and H.R. 6654 would be appropriate in order to limit the total severance tax burden (Tribal, State and local) imposed on coal destined for shipment in Interstate Commerce to 12 1/2% in the aggregate.

The Amending Language is as follows:

H.R. 6625

Page 2, line 16, insert "Indian Tribe (as defined in Title II, §201. P.L. 90-284)" after "State".

Page 2, line 23, insert, "Indian Tribe" after "State".

H.R. 6654
Page 2, line 13, insert "Indian Tribe, as defined i Title II, §201, P.L. 90-284)" after "State".

Page 2, line 20, insert "Indian Tribe" after "State".

Conclusion

In summary, the environmental impacts from Westmoreland's Montana coal mining operations are tightly controlled under detailed Federal and State standards currently implemented by a dual State/Federal permitting and enforcement system. Westmoreland has been engaged in a continual process of amending its State and Federal permits in recent years in order to meet constantly changing legal requirements, and this process will continue through at least two more major permit revisions, one at the State level and one at the Federal level.

Westmoreland's customers are subject to Montana's coal severance tax and other taxes under their sales agreements with Westmoreland. As currently proposed, H.R. 6625 and H.R. 6654 would not bring Tribal severance taxes within the overall 12 1/2% limit, which is a matter of concern to the company and its customers.

Respectfully submitted

/S/ C.J. Presley

DATED: June 4, 1980

C.J. Presley
President
Westmoreland Resources, Inc.

TESTIMONY OF
MICHAEL PODHORZER
LEGISLATIVE DIRECTOR
CONSUMER FEDERATION OF AMERICA

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
U.S. HOUSE OF REPRESENTATIVES
June 5, 1980
RE: ENERGY SEVERANCE TAXES

Consumer Federation of America is a federation of 220 national, state and local non-profit organizations that have joined together to espouse the consumer viewpoint. CFA and its member organizations represent over 30 million consumers throughout the United States. Among our members are: 60 state and local consumer organizations; 83 consumer cooperatives; 16 national labor organizations; and 27 national and regional organizations.

Very few, if any, events have created the enormous problems of income distribution that followed the quadrupling of oil prices in 1973. For the last seven years Congress has grappled with the same basic question in many forms: should those in control of energy resources be allowed to exploit the current situation and reap enormous windfalls? Congress and the Administration's record in dealing with this fundamental question has not been good. The decision to decontrol oil and natural gas decided the question of distribution of income between producers and consumers squarely in favor of the oil companies. The failure to make a strong commitment to reducing petroleum imports has decided the question of distribution between the producing nations and the United States in favor of OPEC.

Today, this hearing begins consideration of another distributional problem --whether energy rich states should be allowed to follow the oil companies and OPEC down the same path to easy riches. Representative Sharp's bill, which would limit coal severance taxes to 12.5% is an important first step in protecting the citizens of the consuming states from this sort of exploitation. But it is only a first step. Most, if not all of the arguments that are being made today against allowing coal rich states such as Montana and Wyoming to impose excessive severance taxes --valid as they are-- also apply to oil and gas producing states, including Texas and Louisiana.

Severance taxes are effecting an enormous transfer of income between states. Chase Econometrics estimates that in 1976 before the recent doubling of oil prices-- Louisiana had a 10.1 billion dollar surplus in its energy dealings. Texas has a 9.6 billion dollar surplus, and Oklahoma and New Mexico, Kentucky, Wyoming, and West Virginia all had surpluses between 1 and 2 billion dollars.

The Treasury estimates that over the next decade decontrol of crude oil alone will add 123 billion dollars in severance taxes to the producing states. Alaska, Texas, and California will receive more than 20 billion dollars a piece.

Since most severance taxes are levied on the value of the energy resource, OPEC increases automatically increase the state's revenues. For example, Texas severance tax revenues rose 170% between 1973 and 1977.

The effect of excessive severance taxes has been to subsidize the governments of the producing states. As a result , the citizens of Michigan are paying taxes in Montana and the citizens of Massachusetts are paying taxes in Texas. Because of severance taxes, Texas is the only large State in the nation without a corporate or personal income tax, and ranks 49th in per capita state taxation.

Indeed, according to the Federal Reserve Bank of Dallas, OPEC price increases eliminated the need for tax increases:

> If the OPEC nations had not boosted world oil prices and severance taxes from oil and gas in Texas had increased at about the trend rate of growth in the late sixties and early seventies, Texas tax collections for fiscal 1974-77 would have been about half the sum actually collected, or about $1.3 billion dollars less. The increase in revenues attributable to the OPEC oil price boost is about the same size as the $1.1 billion dollar increase in the budget surplus during the same four year period. Hence, the rise in oil and gas prices has put off the need to raise severance taxes or revenues from other sources.

In Wyoming, revenues from the severance tax amounted to 17.3% in 1978. In Texas the figure is 14.1% in Oklahoma 13.3% and in Montana 10.0%.

The problem of high coal severance taxes will become more serious in the coming years as the use of western coal increases. This increase will in large part be a direct response to national energy policy decisions made by Congress and the Administration. Legislation already passed accelerating the use of coal includes the Energy Supply and Environmental Coordination Act of 1974, the Energy Policy and Conservation Act of 1975 and the Power Plant and Industrial Fuel use Act of 1978. Congress is currently considering the Administration's coal back-out bill. The huge subsidies for synthetic fuels will further increase the demand for coal. Indeed, the President has proposed a goal of doubling 1978 coal production by 1985.

The importance of HR.6625 becomes manifest when it is realized that the two states with severance taxes in excess of 12.5% -Montana and Wyoming contain 40% of the nation's coal reserves. Montana with its 30% severance tax alone has 25% of the nation's reserves. The Department of Energy extimates that Montana and Wyoming's share of coal production will rise from 1/10 in 1977 to 1/4 in 1985 and to 1/3 in 1990.

Furthermore, as the demand for coal increases, as the price of coal rises, and as taxes become even more unpopular, the problem of excessive severance taxes will grow. Already, there are indications that Colorado, and New Mexico may raise their severance taxes. Wyoming is also considering raising its severance tax rate again.

The most common justification for severance taxes is that they are necessary to cover the costs associated with natural resource extraction for example, the costs of reclamation and creating an infrastructure. However, the rates imposed by Montana and Wyoming --and indeed the cap set by HR. 6625-- exceeds the rate necessary to cover the legitimate social costs associated with production. Furthermore, producers pay some of the reclamation costs and the federal government pays the costs of the impacts of production on Federal lands.

Other coal producing states are able to cover the costs associated with production with severance taxes that are fraction of the ceiling in HR. 6625 and the rates imposed by Montana and Wyoming. Kentucky, currently the state producing the most coal imposes a severance tax of 4.6%.

The fact that Montana' s 30% tax rate is based more on the desire to capture the monopoly value of energy rather than on the need to recover the legitimate costs of natural resource extraction is confirmed by the findings whic accompanied the passage of Montana 30% tax in 1975 (MCA 15-35-101) E:

> Coal in Montana when subbituminous and recoverable in strip mining is in sufficient demand that at least one third of the price it commands at the mine may go to the economic rents of royalties and productions taxes.

The level of Montana taxes was geared not to any approximation of coal related costs but rather to what an out state market could be forced to bear.

One final point must be made. Putting a cap on severance taxes is only a proconsumer policy if in fact the taxes are being passed on to consumers. This is generally the case today with respect to coal. Senator Thomas Towe, the sponsor of the Montana severance tax stated:

> In other words, the local companies simply add the additional taxes to their bill, and the entire cost is passed on to consumers in the Midwest or elsewhere. Because most of the purchasers are regulated utility companies, it is reasonable to assume these companies will, in turn, pass on their entire costs to their customers. (Explanation of Reasons for Montana's Coal Tax 1976.)

Accordingly, it is essential that Congress carefully monitor the implementation of this bill in order to ensure that the result is a genuine savings to consumers rather than an increase in coal company profits.

(307)
635-3416

WYOMING OUTDOOR COUNCIL
P.O. Box 1184 2003 Central Cheyenne, WY 82001

To: Representative Dick Cheney (R-Wyoming)

From: The Wyoming Outdoor Council

Re: H.R. 6625 (Sharpe, D-Indiana)

Date: June 5, 1980

The Wyoming Outdoor Council (WOC) is a statewide public interest organization in the State of Wyoming. The Outdoor Council, founded in 1967, works to provide citizens a voice in the major decisions confronting their state. Over the years, WOC has addressed the social, economical and environmental impacts resulting from major industrial facility siting in rural areas and resulting from rapid energy development throughout the state.

The Outdoor Council would like to share with you our concerns regarding recent attempts to place a limit on Wyoming's ability to tax mineral production within her borders.

First and foremost, Wyoming's severance taxes are based on the need of local communities for expanded housing, new schools, improved roads, water and sewer facilities and social services due to the rapid rate of energy development over the last ten years.

Coal production in Wyoming has grown from 14 million tons per year in the early '70s to more than 72 million tons per year today. Together with this 500% increase in coal production, Wyoming's population has increased 30% in ten years. The average national growth figure is less than 2%. Wyoming is obviously doing its part to reduce our national dependence on foreign oil.

A State's Right to Levy Taxes

Wyoming's severance tax has been falsely reported at 17%. Wyoming's severance tax is only 10.5%. Property, or ad valorem taxes,

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equal another 6,5%, thus arriving at the oft-quoted 17% figure.

A law limiting a state's ability to collect property taxes could have far-reaching effects on many states and local communities. Property taxes are a common means of funding such public works as education, public services, etc.

Coal Tax Not a Burden

The Congressional Research Service has concluded that Montana's 30% coal severance tax actually costs consumers less than oil and natural gas severance taxes imposed by other states. The report shows that severance taxes account for 5.1% of consumers' bills for electricity generated from oil; 4.4% for home heating oil; 3.8% for natural gas; and 3.6% of the heating bills of those who use coal mined in Montana.

Impacts of Coal Production on Wyoming

To fully realize the impacts of coal production on Wyoming, one must realize the depressed state of the economy back in 1970. When the boom began, Wyoming was already behind in municipal and social services--- since then, the gap has widened.

Of Wyoming's 10.5% coal severance tax, 2% goes directly to a coal impact tax fund, The revenues of that fund are allocated to communities directly impacted by coal mining. These monies are used to help fund water and sewer projects, as well as, road and street construction. In 1979, there were $8.1 million in this fund, however, there were $17.7 million in requests.

Other uses of Wyoming's 10.5% coal severance tax include: 1) 2% for the operation of state government; 2) 1.5% for capital construction; 3) 1.5% for water development; 4) 1% for highway development; and 5) 2.5% to the permanent mineral trust fund (PMTF). The operation of state government includes the state's Industrial Siting Administration and the Department of Environmental Quality. both created on the heels of the mineral boom. The workload experienced by each of these offices has dramatically increased over the years. Capital construction includes construction of state capital and education facilities. The need for water development in a semi-arid agricultural state is obvious, especially in light of increasing competition for water due to energy development. Wyoming's streets and highways are in a constant state of disrepair due to increased use and heavy industrial travel. Finally, the PMTF is Wyoming's edge on the future, to help deal with the bust once all of Wyoming's mineral wealth has been depleted.

Wyoming's communities are in need of hundreds of millions of dollars in capital improvements, a reliable intra-state bus system, and alcohol, drug and family abuse centers. Current revenues are not enough to provide for these very serious needs.

A Misdirected Effort

After pointing out Wyoming's need for impact assistance via state severance taxes, the Outdoor Council would like to address the motivation of those working to limit Wyoming's ability to tax coal production in the state.

Many have pointed out the very small percentage of a consumer's bill which is attributable to Wyoming's severance tax. Consider the average monthly bill of an electric consumer in San Antonio. In 1979, their monthly bill averaged $64. Less than 50¢ of that bill went to pay Wyoming's severnace tax, while $7 of that monthly bill paid coal transportation costs. If Wyoming's total excise taxes on coal were reduced to 12.5%, the San Antonio consumers' electric bill would have been reduced by a mere 15¢.

Minnesota, another coal consuming state places a 4% tax on the sale of electricity which amounts to 96¢ of a Minnesotan's average $24 monthly electric bill. The severance tax on Montana coal, the major fuel supplier for Minnesotan utilities, comprises an equal amount of that monthly electric bill. Why should Montana not be allowed to charge consumers for the FULL cost of producing that coal, when the State of Minnesota charges consumers an equal amount and bears none of the impacts. A roll back of Montana's severance tax from 30% to 12.5% would save Minnesotan consumers only 60¢ per month.

In light of the two above examples, it seems absurd that the National Coal Consumers Alliance (NCCA) would continue to spend more than $100,000 per month (according to Mayor Don Fraser of Minneapolis, president of NCCA) on their campaign to limit state severance taxes. While the NCCA justifies their actions in the name of consumers, they are hardly sincere in their efforts to significantly reduce electricity costs.

A more direct way to reduce consumers electricity costs, would be to reduce their total consumption of electricity. Why are these utilities not considering conservation locans, buy-back programs for solar or wind-generated electricity, energy fuel rate reductions for certain elderly and disabled persons or an inverted rate structure which rewards consumers for using less electricity? Any of the aforementioned programs would more substantially help consumers reduce their electricity costs than the utilities proposal to limit state severance taxes. Besides, reducing electricity costs, these programs would also reduce total electricity consumption. Under present rate structures, utilities offer cheaper rates for higher usage.

A common explanation for this campaign to limit state's severance taxes, is that severance taxes frustrate our national energy policy which mandates removing excessive burdens on the production of coal. Severance taxes in no way affect the national production of coal. Wyoming's rate of production has risen 500% in less than 10 years. In fact, coal production in Wyoming rose 30% just in the last year, with present severance tax rates. Besides, as the utilities have so aptly pointed out, they pass this cost onto their consumers anyway. Consumers do not decide whether their electricity is generated by coal or oil. Consumers can only decide how much energy to consume.

It is well known that a commodity's price dictates demand. Therefore, a higher electircity cost will serve to dampen demand and thereby conserve energy. Incentives to conserve are in keeping with our national energy policy.

Severance taxes are an easy target for Congressmen who want to show their constituents they are doing something about the high cost of energy. However, these Congressmen could put their efforts to a more constructive use by advocating energy conservation, encouraging use of passive solar on a residential and commercial scale and promoting cogeneration where the wasted steam from a power plant is used to heat buildings.

Both utilities and Congresamen could use more direct and effective means to lower consumers' energy costs if that was what they were really trying to do.

STATEMENT OF

DAVID L. OSTENDORF
ENERGY PROJECT DIRECTOR
RURAL AMERICA
BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
UNITED STATE HOUSE OF REPRESENTATIVES
JUNE 5, 1980

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS DAVID OSTENDORF AND I AM ENERGY PROJECT DIRECTOR FOR RURAL AMERICA, A NATIONAL MEMBERSHIP ORGANIZATION THAT WORKS WITH AND PROVIDES ASSISTANCE TO LOCAL RURAL GROUPS THROUGHOUT THE NATION ON ISSUES RELATED TO HOUSING, HEALTH CARE, ENERGY, LAND AND OTHER RURAL MATTERS.

WE WISH TO REGISTER OUR OPPOSITION TO HR 6625 AND ITS COMPANION BILL, HR 6654, THAT WOULD CAP COAL SEVERANCE TAXES AT 12½% OF THE VALUE OF COAL. THERE ARE A NUMBER OF REASONS FOR OUR OPPOSITION TO THESE BILLS WHICH WE BELIEVE WILL DO LITTLE OR NOTHING TO ALLEVIATE THE BURDEN OF HIGH ELECTRIC BILLS TO AFFECTED CONSUMERS, OR TO INCREASE NATIONAL RELIANCE ON COAL AS A PRIMARY ENERGY SOURCE. AS A NATIONAL MEMBERSHIP ORGANIZATION WITH CONSTITUENCIES THAT WOULD BE AFFECTED BY THIS BILL'S PASSAGE OR FAILURE, WE FEEL THAT AFTER WEIGHING THE FACTS, WE CANNOT SUPPORT IT.

1. The bill is discriminatory against coal-producing states.

The bill clearly discriminates against state-levied taxes on one fuel source-- coal-- but not on other fuel sources, such as gas or oil which. on a BTU basis are taxed at even higher rates by several states than is coal by Montana or Wyoming. If the intent of the bill is to lower energy prices to consumers, it has chosen the wrong target. In fact, as a consumer bill, HR 6625 is little less than a farce. The attempt by the National Coal Consumers Alliance and its friends in the Congress to pass this legislation off as a consumer bill is little less than an attempt to disguise profitable, high energy costs in the flimsy cloak of coal severance taxes.

In fact, the burden borne by the consumer for these severance taxes is minimal, amounting to slightly over $6 a year for a household using the maximum average electricity consumption, 7,000 kilowatt hours, generated largely by Wyoming coal. Research done by the office of State Senator Thomas Towe of Montana indicates that in 1977, Montana coal severance taxes amounted to about one-half of one percent of the utility bills of residential customers of two Illinois Utilities that used Montana coal. These same consumers, pay a 5% Illinois sales tax on their bills as a result of the state's Public Utility Tax Act. It makes little sense to zero in on the Montana severance tax to "relieve" the costs of electricity to consumers who are paying a higher state sales tax to their own state than they pay Montana in severance taxes. Furthermore- as you are keenly

AWARE- SOME 60% OF THE COST OF WESTERN COAL DELIVERED TO MID-WESTERN UTILITIES IS IN TRANSPORTATION ALONE. IN SHORT, THE SEVERANCE TAX IS HARDLY THE PLACE TO START IN AN ATTEMPT TO LOWER THE COSTS OF ELECTRICITY GENERATED, IN PART, BY WESTERN COAL, AND CONSUMED BY RESIDENTS OF THE MIDWEST.

2. THE BILL IS AN UNWARRANTED FEDERAL INTRUSION INTO STATE TAX POLICIES, AND REFLECTS AN UNEVEN APPROACH TO COAL DEVELOPMENT AND COAL TAZATION POLICIES.

THE BILL ADDRESSES THE ISSUE OF CAPPING SEVERANCE TAXES AT 12½%, BUT DOES NOT EVEN TAKE INTO CONSIDERATION THE EFFECT OF VARYING SEVERANCE TAX RATES ON VARYING COAL PRICES. THE COST OF COAL AT THE MINE IS THE OBVIOUS, KEY FACTOR IN DETERMINING THE IMPACT TO THE CONSUMER OF THE SEVERANCE TAX LEVIED ON THAT COAL. IT DOES NOT TAKE A MATHEMATICAL GENIUS TO CALCULATE THE DIFFERENCE BETWEEN AT 30% TAX ON MONTANA COAL SELLING AT $9 A TON AT THE MINE AND A 4.5% TAX ON KENTUCKY COAL SELLING AT $25 A TONE AT THE MINE. WHILE THE MONTANA COAL WOULD YIELD 82.5¢ PER TON MORE IN STATE TAXES AT CURRENT RATES, THE PROPOSED CAP COULD MEAN KENTUCKY COAL AT 4.5% WOULD YIELD 35¢ PER TON MORE THAN MONTANA COAL AT 12½%. THE EXAMPLES COULD GO ON AND ON, BUT THE POINT OF THE MATTER IS THAT SHORT OF TOTAL MANIPULATION OF THE MARKETPLACE, CONGRESSIONAL TINKERING WITH SEVERANCE TAXES WILL NOT RESULT IN ANY LEVELLING OF COSTS TO CONSUMERS OR IN ANY EVEN-HANDEDNESS WITH REGARD TO SEVERANCE TAX RETURNS TO COAL-EXPORTING STATES.

THE BILL ALSO FAILS TO ADDRESS THE ISSUE OF PUTTING A FLOOR UNDER COAL SEVERANCE TAXES. THE FACT IS THAT ONE MAJOR COAL-PRODUCING STATE-- ILLINOIS-- HAS NO SEVERANCE TAX AT ALL, AND OTHER COAL STATES COMPARATIVELY SMALL SEVERANCE TAX RATES. ONE OF THE

ARGUMENTS USED AGAINST THE SEVERANCE TAX IN ILLINOIS BY BOTH THE UTILITIES AND THE ILLINOIS COAL OPERATORS IS THAT IT WOULD MAKE THE STATE'S COAL UNCOMPETITIVE WITH ALREADY CHEAP WESTERN COAL. IF THE CONGRESS IS SO CONCERNED ABOUT THE USE, AVAILABILITY AND AFFORDABILITY OF COAL, THEN IT SHOULD PERHAPS CONSIDER MANDATING A UNIFORM AND ALL-INCLUSIVE COAL SEVERANCE TAX TO TAKE THE ANXIETY OUT OF THE INDUSTRY AND ITS UTILITY CUSTOMERS.

FURTHERMORE, THE COAL SEVERANCE TAX IMPOSED BY MONTANA AND WYOMING HAVE IN NO WAY INHIBITED COAL DEVELOPMENT IN THOSE STATES OR INTERSTATE COMMERCE INVOLVING COAL FROM THESE STATES. FROM 1979 1979, WYOMING'S COAL PRODUCTION INCREASED FROM SOME 30 MILLION TONS TO SOME 79 MILLION TONS, WHILE MONTANA COAL PRODUCTION INCREASED FROM 21 MILLION TONS IN 1975 TO SOME 30 MILLION TONS IN 1976 THE POWDER RIVER BASIN REGION OF WYOMING CURRENTLY HAS SOME 23 ADDITIONAL MINES IN VARIOUS STAGES OF DEVELOPMENT.

3. THE CAPPING OF COAL SEVERANCE TAXES WILL, IN THE LONG RUN, COST THE TAXPAYER. MONTANA AND WYOMING ARE STATES THAT HAD THE FORESIGHT TO MAKE AN ATTEMPT TO AVOID THE BITTER LEGACY OF THE BOOM-AND-BUST COAL DEVELOPMENT CYCLE THAT LEFT APPALACHIA AND PARTS OF THE MIDWEST IN RUIN AND POVERTY, AND CONTROLLED BY ABSENTEE INTERESTS. SEVERANCE TAX REVENUES RECEIVED BY THE TWO STATES GO TO A VARIETY OF USES THAT HELP DEFRAY BOTH THE IMMEDIATE AND LONG-TERM COSTS OF COAL DEVELOPMENT ON COMMUNITIES AND CITIZENS. UNFORTUNATELY, THE CONGRESS HAS NOT SEEN FIT TO

GIVE HIGH PRIORITY TO PROVIDING FINANCIAL ASSISTANCE TO ENERGY-IMPACTED COMMUNITIES, EVEN THOUGH THE CONGRESS WANTS THE COAL MINED AND USED THROUGHOUT THE NATION TO OFFSET U.S. DEPENDENCE ON FOREIGN OIL. THIS BILL COMPLETELY ERODES THE ATTEMPTS OF THE COAL STATES TO PICK UP THE SLACK THAT THE CONGRESS WILL NOT PROVIDE IN THE FORM OF ENERGY DEVELOPMENT IMPACT ASSISTANCE. CONGRESS CANNOT HAVE IT BOTH WAYS!

IN MANY COAL STATES, SEVERANCE TAXES ARE USED EXTENSIVELY TO FINANCE IMPACT ASSISTANCE, AND THE TAXES ARE OFTEN THE ONLY SIGNIFICANT SOURCES OF FUNDING COMING BACK INTO THE AFFECTED COAL REGION FOR THE COST OF RESOURCE DEPLETION AND THE DISRUPTION THAT ACCOMPANIES IT. PROPERTY TAX PAYMENTS FROM COAL COMPANIES ARE OFTEN MINIMAL, ESPECIALLY COMPARED TO THE DAMAGE AND DISRUPTION THEY WREAK ON COALFIELD COMMUNITIES. IN WILLIAMSON COUNTY, ILLINOIS, FOR EXAMPLE, THE TOTAL TAXES PAYABLE IN 1977 FOR LAND AND MINERALS OWNED BY THE COAL COMPANIES CONTROLLING SOME 32,255 ACRES (11.86%) OF THE COUNTY, AMOUNTED TO ABOUT $10 PER ACRE. IN THIS SAME COUNTY, SOME 15% OF THE PEOPLE LIVE BELOW THE POVERTY LEVEL, MEANING THAT THE COUNTY IS COMPELLED TO RELY ON TRANSFER PAYMENTS FROM STATE AND/OR FEDERAL SOURCES TO COVER ITS OPERATING EXPENSES AND TO PROVIDE BASIC SUPPORT FOR ITS CITIZENS.

EVEN IN THOSE STATE THAT, UNLIKE ILLINOIS, DO HAVE SEVERANCE TAXES ON COAL, THE MONEY IS OFTEN TOTALLY INADEQUATE TO COVER THE NEEDS OF COUNTIES PREVIOUSLY RAVAGED BY COAL MINING OR UNDERGOING NEW COAL DEVELOPMENT.

THE 1970 CENSUS INDICATES THAT ABOUT 44% OF THE POPULATION OF EASTERN KENTUCKY LIVED BELOW THE POVERTY LEVEL. WHILE SEVERANCE TAXES DO HELP OFFSET THE COSTS (IN A MINIMAL WAY) OF GOVERNMENT IN THOSE COUNTIES, THERE IS STILL EXTREMELY HEAVY RELIANCE ON TRANSFER PAYMENTS TO COVER THE COSTS OF THE PAST RAVAGES OF COAL DEVELOPMENT SUCH AS BLACK LUNG DISEASE, ROADS, FLOOD DAMAGE, AND THE LIKE. AND IN SPITE OF SUCH TRANSFER PAYMENTS, MANY OF THOSE SAME COUNTIES REMAIN UNDER THE CONTROL OF ABSENTEE ENERGY INTERESTS. IN MORTON COUNTY, KENTUCKY, IT IS SAID THAT SOME THREE-FOURTHS OF THE COUNTY FUNDS COME FROM THE FEDERAL GOVERNMENT, SINCE THERE IS LITTLE TAXABLE RESOURCE BASE LEFT ON WHICH TO RUN THE COUNTY AFTER THE COAL BOOM HAS BOTTOMED OUT. EVEN IN WYOMING-- UNDER ATTACK NOW FOR ITS SEVERANCE TAX-- MUNICIPALITIES IN 1979 APPLIED FOR THREE TIMES AS MUCH MONEY FOR IMPACT ASSISTANCE AS WAS AVAILABLE THROUGH THE COAL TAX REVENUE ACCOUNT. A REDUCTION IN THE SEVERANCE TAX WOULD MEAN FURTHER RELIANCE ON THE FEDERAL GOVERNMENT FOR THE NEEDS OF IMPACTED COMMUNITIES IN THE IMMEDIATE FUTURE, AND FOR THOSE COMMUNITIES THAT WILL BE LEFT BEHIND WITH THEIR COAL RESOURCES DEPLETED IN THE FUTURE.

WHAT THIS MEANS IS THAT THE CAPPING OF COAL SEVERANCE TAXES WILL, IN THE LONG RUN, MEAN THAT THE COSTS OF ENERGY DEVELOPMENT WILL BE BORNE BY THE FEDERAL GOVERNMENT. WE BELIEVE THAT IT IS FAR BETTER TO HAVE THE MONEY FOR THOSE NEEDS GENERATED DIRECTLY BY THE COAL STATES AND CONTROLLED DIRECTLY BY THE COAL STATES, AND THAT, TO THE EXTENT POSSIBLE, IT IS BETTER TO HAVE THE DIRECT CONSUMER OF THE COAL PAY AT LEAST PART OF THE BILL. THE FEDERAL GOVERNMENT IS GOING TO HAVE TO PAY FOR NATIONAL COAL DEVELOPMENT POLICIES AT SOME POINT IN THE FUTURE; COAL STATES AND COALFIELD COMMUNITIES CANNOT BE EXPECTED TO BEAR THE BRUNT OF A NATIONAL POLICY THAT IS BASED ON THE EXPLOITATION OF THEIR RESOURCES OR THE RESOURCES OF THE FEDERAL GOVERNMENT LOCATED WHITHIN THEIR BOUNDARIES. WHEN THAT TIME COMES, WE TRUST THAT WE WILL BE ABLE TO COUNT ON YOUR SUPPORT TO PAY THE COST TO COAL STATES AND COALFIELD COMMUNITIES FOR THE POLICIES CURRENTLY BEING IMPLEMENTED BY THE CONGRESS AND THE ADMINISTRATION TO ACCELERATE COAL PRODUCTION AND SYNTHETIC FUEL DEVELOPMENT.

PREPARED STATEMENT BY DR. ELIHU BERGMAN, EXECUTIVE DIRECTOR
AMERICANS FOR ENERGY INDEPENDENCE

Thank you, Mr. Chairman, for the invitation to express our views concerning H.R. 6625, H.R. 6654, and H.R. 7163. All these bills concern a coal severance tax. My name is Elihu Bergman, Executive Director of Americans For Energy Independence. We represent a nationwide coalition of groups and individuals from all sectors of American society committed to the proposition that America's continued and growing dependence on a limited number of foreign oil sources is and will be seriously injurious to the political and economic well-being of our country. We are therefore pledged to support national policies and actions which will begin to reverse this dependence, not 20 or 50 years from today, but now. We believe that this country has already lost too much time. We hope to educate the American public of the need for independence in energy production without which we are reduced to a state of Sompson without hair.

Our organization appoaches energy issues from a national security point of view. The American public needs to be reminded that its survival depends on its ability to wean the United States away from an over-dependence on imported energy fuels. We maintain that a reduction of energy dependence is a key criterion in all our public policies, whether in the economic, political or defense fields. Though not the sole criterion it is certainly one of the most important. The central concern should be the impact of energy dependence on the American society and the American role in the international community.

We urge this Committee and the Congress as a whole to adopt such a policy posture and to judge issues presented in the context of energy independence. It is already difficult to explain to the next generation why after seven years following the Arab oil embargo there has been very little change in the level of oil imports. We have in fact lost seven valuable years. Will we lose another seven? More importantly, can we afford to lose another seven years? Another seven months? We think not.

We can counteract U.S. oil dependence during the next seven years with systematic policies which would reduce the demand for oil while increasing the utilization of domestically produced energy fuels. Where we can substitute another energy source for oil, we should do so at once. The continuing use of oil to generate electricity creates a dual blow: to the economy by maintaining the growing demand for oil imports, and to individual consumers by forcing upon them the most expensive form of electricity. There are alternatives to oil for electricity generation that are available now and are cheaper. Coal is one of them. Its usage should be encouraged, not frustrated, as a priority objective of national energy policy.

The legislation before you is drafted to facilitate expanded coal usage. It would do so by asserting the primacy of the national interest in the levying of taxes by states on coal production within their jurisdictions. The legislation is designed to achieve a balance between national and state interests by imposing a ceiling on the taxing authority available to states that would assure the competitive position of coal mined within their jurisdictions. This ceiling is set at a maximum of 12-1/2% of the value of the coal produced in one fiscal year within the state or political subdivision thereof. The percentage would be adequate to compensate the state or political subdivision for costs to be incurred to develop and support governmental operations and other public services necessitated by the mining operations.

Mr. Chairman, as you can readily see, our support for the legislation before you comes naturally and easily in light of our national security concerns. Any impediment to increased consumption of an oil substitute will be viewed in general with skepticism by our organization.

Our approach is totally pragmatic. We find our framework very useful in resolving issues which may involve competing objectives and in which so-called "facts" can be used to support opposing points of view. I suggest to you that the coal severance tax may well fall into this category.

To save this Committee time, I will not review the facts and allegations made by both sides on the issue of the coal severance tax. Other witnesses have provided the Committee with all the pertinent data and analysis. We hope to be helpful to this Committee by suggesting a policy framework within which judgments can be made. Our main reason for supporting the legislation before you is the opportunity that it provides for the expression of certain cardinal principles and national goals. The leadership and encouragement that this Committee and its counterpart in the other body can furnish to the achievement of energy independence are unequalled and it is in that context that we recommend passage of this legislation.

And what are these principles, Mr. Chairman, to which I refer? First and foremost is the principle of energy independence. For us this concept involves the freedom to make energy policy choices that are responsive to U.S. national interests, a capability which can be derived only from an uninterrupted access to reasonably priced supplies of required energy products, and a primary reliance on domestic energy resources.

It is that last point which brings us here to discuss coal severance tax. It might seem to be a long step from national security to this tax, but in fact and in concept, the two matters are closely linked. All unreasonable impediments to increasing development and utilization of coal and other indigenous fuels must be removed. Conversely, we must not permit the growth of disincentives which might inhibit conversion of power plants to non-oil fuels. Positive action by this Committee on H.R. 6625, H.R. 6654 and H.R. 7163 would support the goal of "primary reliance on domestic energy resources".

The second major principle which we urge this Committee to adopt concerns the rights of individual states or groups of states as applied to the field of energy. We do not intend to involve ourselves in the constitutional arguments, which too often resolve nothing, but which do increase tensions and aggravations. We believe that in today's circumstances, issues related to energy must be viewed pragmatically. We are not concerned about energy for energy's sake. We regard energy as a vital component of our national objectives, as it has always been. There is nothing ideological about energy; in itself it is neither good nor evil.

Arguments about states' rights, pertinent as they may be, are not likely to synthesize this nation into urgent action to meet a peril of major magnitude. The fact is that all of us face this peril: we must face it together. We cannot afford to have one part of this nation appear to be taking advantage of other parts. Whether in actual practice unfair advantage is being taken is not as important as the perception of the situation.

The third principle involved in the bills before you has to do with states' prerogatives. There is no question of denying states the right to levy a severance tax on the resources within their jurisdiction. The only issue is the reasonableness of the levy.

Clearly costs will be incurred by political jurisdictions in connection with the development and production of resources. We believe that these jurisdictions have the right and indeed the duty to assess levies adequate to the maintenance of public infrastructures developed to support energy fuel mining. However, we do not consider the costs of developing this infrastructure to be appropriately chargeable to the consumers of the fuel. Where states and other political institutions can not cover these costs, the federal government should provide impact assistance, since the production of native fuels is a vital national interest.

In summary, Mr. Chairman, we urge this Committee to approve a bill limiting the extent of severance tax that may be levied on coal not only for its intrinsic value, but also to establish the following three principles, which we consider fundamental if we are to confront a major crisis of considerable magnitude and of acute consequences for our national survival:

1. We must reach energy independence as rapidly as possible and therefore must remove all unreasonable impediments to the development and production of domestic energy fuels.

2. Since we are faced with a national emergency, no single sector nor a minority coalition of sectors of American society can or should be permitted to take advantage of a privileged position that circumstances may have provided. The opportunities and costs must be shared equally by all Americans.

3. Conversely, just as no political jurisdiction should be permitted to take advantage of a national crisis, so should no single sector or sectors be asked to carry an undue economic burden resulting from an imperative to achieve energy independence. Appropriate governmental costs which must be incurred to develop a domestic energy fuel should be borne by all Americans, all of whom will benefit from the consumption of this fuel, if not directly, then through the achievement of greater national security.

I thank you, Mr. Chairman and members of this Committee, for affording us the opportunity to express our views on issues of vital importance to the well-being of our nation.

[Whereupon, at 6:10 p.m., the subcommittee was adjourned.]

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